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No. 2302

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES)

THE WASHINGTON WATER POWER COMPANY, a Corporation,

Appellant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WANNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho, and His Successor and Successors,

Appellees.

VOLUME I.

(Pages 1 to 374, Inclusive.)

Upon Appeal from the United States District Court
for the District of Idaho, Northern Division.

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[Names and Addresses of Counsel.]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

No. —.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Appellant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor,
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Respondents.

JOHN P. GRAY, Esq., Coeur d'Alene, Idaho,

F. T. POST, Esq., Spokane, Washington,

Attorneys for Appellant.

N. D. WERNETTE, Esq., ROBERT H. ELDER,
Esq., Coeur d'Alene, Idaho,

Attorneys for Respondents.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

2 *The Washington Water Power Company vs.*

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor,
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Bill of Complaint.

To the Honorable District Court of the United
States for the District of Idaho, Northern Divi-
sion.

The Washington Water Power Company, a corpo-
ration organized and existing under and by virtue of
the laws of the State of Washington, and a citizen of
said State, brings this its bill of complaint against
the above-named defendants, Kootenai County, a mu-
nicipal corporation organized and existing under and
by virtue of the laws of the State of Idaho and a
citizen of said State, and Fred E. Wonnacott, as
Assessor and Ex-officio Tax Collector for said Koo-
tenai County, Idaho, and thereupon plaintiff com-
plains and says:

I.

The plaintiff is now and was at all of the times
mentioned in this complaint, a corporation created
and existing under and by virtue of the laws of the
State of Washington, having its principal place of
business at Spokane, Washington, and is now and at
all of the times mentioned in this complaint was a
citizen of the State of Washington, and that it has
at all of the times herein mentioned fully complied
with the laws of the State of Idaho relating to for-
eign corporations and is [1*] authorized and

*Page-number appearing at foot of page of original certified Record.

empowered by virtue of such compliance with the laws of the State of Idaho to do business and to acquire and hold property in said State.

II.

That the defendant Kootenai County was at all of the times herein mentioned and now is a municipal corporation created, organized and existing under and by virtue of the laws of the State of Idaho, and was at all of said times herein mentioned and now is a citizen of said State.

III.

That the defendant Fred E. Wonnacott is the duly elected, qualified and acting assessor and ex-officio tax collector of Kootenai County, Idaho, and was at all of the times herein mentioned and now is a citizen and resident of said State.

IV.

That during the year 1911, the said defendant Fred E. Wonnacott was and still is the duly elected, qualified and acting assessor and ex-officio tax collector of said Kootenai County, Idaho.

V.

That at all of the times since the 1st day of January, 1911, and prior thereto the complainant was and now is the owner of the following described property situated at Post Falls, Idaho, to wit:

All of that portion of Lot Nine (9) in Section Three (3) Township Fifty (50) N., R. Five (5) W. B. M., lying west of the county road and containing about twenty-four and four hundred and three thousandths (24.403) acres more or less; also Island No. One in Sections Three (3) and Four (4) of the

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aforesaid township and range, containing Forty-two and Three hundred thirty-seven thousandths (42.337) acres; also Island No. Two in Sections Three (3) and Four (4) of the aforesaid township and range, containing sixty-two and sixty-one thousandths (62.061) acres; also all the land and premises in Sections [2] Three (3) and Four (4) of the aforesaid township and range lying and being beneath or under or a part of what is designated and described in the plat attached to the United States patent issued therefor as area of water surface and containing one hundred and forty-one and five hundred ninety-three thousandths (141.593) acres more or less. (Book 1 of Deeds, page 11.)

Beginning at the meandering stake on the north bank of the Spokane river where the north and south line between Sections numbered Three (3) and Four (4) of Township numbered Fifty (50) north of range numbered Five (5) west of the Boise Meridian, intersects said river; thence north on said section line Fifty (50) feet to the center of the proposed extension of Sixth Street as platted in Post Falls Townsite; thence east on the center line of said extension one thousand three hundred eighty-three (1,383) feet to the center of proposed Canal Street; thence southerly at right angles on the center of line of said proposed canal, eight hundred (800) feet to the center of the proposed extension of Fourth Street as platted in Post Falls townsite; thence in a westerly direction at a right angle, five hundred fifty (550) feet to a bank of the Spokane River; thence in a northwesterly direction following the meander of said

Spokane river one thousand two hundred thirty-six (1,236) feet or thereabouts, to the place of beginning containing fifteen and sixty-five hundredths (15.65) acres, more or less, except right of ways for streets; with the entire water rights of the Spokane River at Post Falls, Idaho, conveyed to the party of the first part by Frederick Post and Margaret Post, his wife, by deed dated October 9, 1891, and filed for record in the office of the recorder of Kootenai County, Idaho, on December 5, 1891, and of record in said office at page 280 of Book H of Deeds, and the use to and of all the waters, water power, water rights, easements, property, estate, rights, privileges and appurtenances acquired by said party in said deed. (Book U of Deeds, pages 412-413.)

Commencing at a starting point described as follows, Fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections three (3) and four (4) in Township Fifty (50) north, range five (5) west B. M.; running thence east one thousand three hundred eighty-five (1,385) feet to a point on the center line of Sixth Street of the town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four tenths (1124.4) feet to a point which is marked "A" on said blue-print; thence west two hundred ninety-three (293) feet to a point on the east bank of the north channel of the Spokane River which is the true place of beginning; running thence south from said true place of beginning ten degrees (10°) east, westerly one hundred (100) feet; thence south nineteen degrees (19°) east two hundred ten

(210) feet; thence south thirty-three degrees (33°) east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west bank of a canal or sluice; thence southerly along the west bank of said canal or sluice to a point at low water marked on the east bank of the north channel of said Spokane River; thence westerly around the point of land and thence northerly along the low water mark along the east bank of the north channel of said river to the true place of beginning. (Book 9 of Deeds, page 460.) [3]

Commencing at a starting point described as follows: Fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections Three (3) and Four (4) in Township Fifty (50) W. B. M.; running thence east one thousand three hundred eighty-five (1,385) feet to a point on the center line of Sixth Street, of the town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four tenths (1124.4) feet to the true place of beginning, which is marked "A" on said blue-print; running thence west from said true place of beginning two hundred ninety-three (293) feet to the east bank of the north channel of the Spokane River; thence south ten degrees (10°) east one hundred (100) feet; thence south nineteen degrees (19°) east two hundred ten (210) feet; thence south thirty-three degrees (33°) east two hundred ten (210) feet; thence east two hundred eleven (211) feet; to the west line of a canal or sluice; thence northerly along the west bank of said canal or sluice to a point; thence west

sixty-four (64) feet to the true place of beginning. (Page 462, Book 9 of Deeds.)

Commencing at a starting point described as follows: fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections Three (3) and Four (4) in Township Fifty (50) north of Range Five (5) W. B. M.; running thence east one thousand three hundred eighty-three (1383) feet to a point on the center line of Sixth Street of the Town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four-tenths (1124.4) feet to the true place of beginning, which is marked "A" of said blue-print. Running thence west from said place of beginning two hundred ninety-three (293) feet to the east bank of the north channel of the Spokane River thence south ten degrees (10°) east one hundred (100) feet; thence south nineteen degrees (19°) east two hundred ten (210) feet; thence south thirty-three (33°) degrees east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west line of a canal or sluice; thence northerly along the west bank of said canal or sluice to a point; thence west sixty-four (64) feet to the true place of beginning. Also commencing at said point on the east bank of the north channel of the Spokane River two hundred ninety-three (293) feet west of the point above described as the true place of beginning; thence south ten degrees (10°) east one hundred (100) feet; thence south nineteen degrees (19°) east two hundred ten (210) feet; thence south thirty-three degrees (33°) east two hundred ten (210) feet; thence east

two hundred eleven (211) feet to the west bank of a canal or sluice; thence southerly along the west bank of said canal or sluice to a point at low water marked on the east bank of the north channel of said Spokane River; thence westerly around to the point of land, and thence northerly along the low water mark along the east bank of the north channel of said Spokane River to the said point on the east bank of the north channel of said river two hundred ninety-three (293) feet west of said point above described as the true place of beginning. (Book 9 of Deeds, page 464.)

Commencing on a point on the south line of Fourth Street extended west, one thousand (1000) feet from the northwest corner of Block twenty-one (21) in the town of Post Falls, Kootenai County, Idaho; thence south parallel with Spokane street in said town, two hundred forty-six (246) feet; thence west parallel with the extension of Fourth street, one hundred [4] sixty (160) feet; thence north parallel with Spokane street two hundred forty-six (246) feet; thence east one hundred sixty (160) feet to place of beginning.

Also a strip of land described as follows: Commencing at a southwest corner of the above described land, running thence west four hundred eighty (480) feet to the brink or meander line of the Spokane river; thence north along said meander line, twelve (12) feet, thence east parallel with and twelve feet north of said first line, four hundred eighty (480) feet, more or less, to the west line of said first described tract; thence south twelve (12) feet to the

place of beginning.

Also a tract or parcel of land described as follows: Beginning at the northwest corner of Millsite deeded by Frederick Post and Margaret Post, his wife, to Charles M. Peterson and Hugh M. Strathern, at a point on the west line of the right of way of the spur of Spokane & Idaho railroad; thence west sixty (60) feet; thence north one hundred fifty (150) feet; thence west following the line of Charles M. Peterson and Hugh M. Strathern's Millsite and parallel with the cable right of way belonging to Cable Milling Company, party of the first part, being the strip of land last above described, to the meander line of the east bank of the Spokane River; thence northerly on said meander line thirty-eight (38) feet to its intersection with the south line of the aforesaid Cable right of way; thence easterly along south line of said Cable right of way and south line of Millsite of Cable Milling Company above described, to the intersection of the west line of said right of way of said Spokane & Idaho Railroad spur; thence south along said west line of said spur right of way one hundred eighty-eight (188) feet to place of beginning, containing within said boundaries the cross canal and the Spokane River.

All of said tracts of land herein described being situate in Section three (3) Township fifty (50) North of Range five (5) W. B. M., excepting rights through the main canal heretofore conveyed to the Post Falls Water Power Company; also excepting the reservation of lands within the limits of the proposed extensions of Canal street along the east bank

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of said Main canal, together with sufficient amount of water to create or afford two hundred (200) horse power under forty (40) foot head, said water to be used from the cross canal running from said main canal to the Spokane River, the same being situated at Post Falls in Kootenai County, State of Idaho, intending to remise, release and convey and forever quitclaim unto the second party all the water rights and privileges acquired or enjoyed by said first party by purchase, prescription, use or otherwise.

And upon that property there were certain dams, certain buildings and machinery. That the said property includes the banks and bed of the Spokane River at or near Post Falls, Idaho, where there is a natural waterfall, and upon said lands this plaintiff has constructed dams and an electric power plant and machinery for the purpose of generating and transmitting electric current and electric power; said current and power [5] being generated by water power, and transmitted and sold by this plaintiff for various purposes and uses.

VI.

That in the year 1911, the assessor of said Kootenai County, preparatory to assessing the lands of the plaintiff in said county, made a request of the plaintiff for a list of its said lands and property in said county. That thereafter this plaintiff caused to be made and transmitted to said assessor a list truly and correctly setting forth and describing all of the lands and property owned by the plaintiff and situated in said County of Kootenai, State of Idaho.

VII.

That save and except as aforesaid, the said assessor did not, nor did any of his deputies or assistants, or anyone acting or pretending to act for him or in his behalf, subsequently demand or request of or from this plaintiff any statement under oath or at all, setting forth specifically or at all the real and personal property or any property owned or controlled by plaintiff, either on the second Monday of January, 1911, at the hour of twelve o'clock noon, or at any time and no other or different request or demand for the statement of the property of plaintiff for the purposes of assessment or for any purposes was made upon the plaintiff by said assessor, his deputies or assistants or any of them, than the said request hereinbefore referred to and the said assessor advised this plaintiff at the time the said list was delivered to him, that that was all that he wanted or would require or desired from this plaintiff.

VIII.

That the said assessor did not nor did any of his deputies or assistants at any time in said year 1911 fill out or deliver [6] to plaintiff a statement of the properties of the plaintiff or present or deliver any statement to plaintiff or require plaintiff to fill out any such statement or return any such statement to said assessor properly filled out or at all.

IX.

That the said list delivered by plaintiff to said assessor was duly received by said assessor and was accepted and filed by him, and no entry by said assessor or by anyone was made or noted in said as-

essor's book of assessments of said Kootenai County opposite the name of plaintiff, or at all, of any refusal by plaintiff to give under oath or at all a statement of its property, real and personal, in said county or of any refusal by plaintiff to comply with any of the requirements of the laws of the State of Idaho, and plaintiff alleges that in truth and in fact it did not fail or neglect or refuse to comply with any such requirements.

X.

That thereafter and during the said year 1911, the said assessor of Kootenai County, Idaho, made his pretended assessment of plaintiff's property in said county for the purpose of levying taxes against the said property for the year 1911, for State, county and other purposes and prepared and made a certain pretended assessment-roll wherein he set forth the description of the property so pretended to be assessed by him, and the valuations at which he pretended to assess such property and in said roll the said assessor set forth and described as the property of the plaintiff those certain tracts and parcels of land and other property of the plaintiff as follows:

On page 11, Book 1 of Deeds, situate in Sec. 3 and 4, Twp. 50, Range 5.

On pages 412 and 413, Book "U" of Deeds in Sec. 3, Twp. 50, Range 5. [7]

On pages 460, 461, 462, 463, 464, and 465, Book 9 of Deeds in Sec. 3, Twp. 50, Range 5.

On page 97, Book 34 of Deeds, Grist-Mill in Sec. 3, Twp. 50, Range 5.

Bear trap dam and small dam at Post Falls in Sec. 3, Twp. 50, Range 5.

Buildings and excavating in Sec. 4, Twp. 50, Range 5.

Machinery on Island #2, Sec. 4, Twp. 50, Range 5.

Concrete foundation and dam, Sec. 4, Twp. 50, Range 5.

Railway spur and bridge.

being the same property which was and is in fact the property particularly described in paragraph V hereof. And the said assessor did, in addition thereto assess as against this plaintiff a railroad spur and bridge situated upon said property, and said assessor did extend the same upon the said pretended assessment-rolls, and did set forth as his assessment and valuation thereof the sum so assessed against the plaintiff's property, and did list and pretend to assess the same as follows:

On page 11, Book 1 of Deeds, situated in Sec. 3 and 4, Twp. 50, Range 5; and on pages 412 and 413, Book "U" of Deeds, in Sec. 4, Twp. 50, R. 5.....	\$1080000
On pages 460, 461, 462, 463, 464 and 465, Book 9 of Deeds in Sec. 3, Twp. 50, Range 5.....	75000
On page 97, Book 34 of Deeds, Grist-mill in Sec. 3, Twp. 50, Range 5	40000
Bear trap dam and small dam at Post Falls	562500

14 *The Washington Water Power Company vs.*

Building and excavation, Sec. 4,

Twp. 50, R. 5..... 223000

Machinery on Island #2, Sec. 4,

Twp. 50, Range 5..... 350000

Concrete foundation and dam, Sec.

4, Twp. 50, R. 5..... 150000

Railway spur and bridge..... 48750

And in addition thereto said assessor did assess the other lands and property of the plaintiff in said Kootenai County, Idaho.

XI.

That on the said second Monday in January, 1911, at twelve o'clock noon, the plaintiff was the owner of all of said property, except the said railroad bridge and spur, to which reference is hereby particularly directed, and which is particularly described and referred to hereinafter. [8]

XII.

That this plaintiff at and prior to the time of the assessment of its said property by the said assessor did state to the said assessor that for the purpose of determining the cash value thereof for purposes of taxation said assessor was welcome to use and examine the books, records and papers and cost sheets of the plaintiff for the purpose of determining the actual cost and actual cash value thereof.

That the said assessor did state to the plaintiff that he did not desire plaintiff to fix in its said return the values of its said property, and neglected and refused to investigate the cost sheets, books and records of the plaintiff for the purpose of determining the actual cost of said property for the purpose

of determining its full cash value, and neglected, refused and failed to make any real investigation whatever of the value of the property of the plaintiff above described for the purpose of determining its full cash value, and the said assessor, in disregard of the rights of plaintiff and in violation of its rights and without notice to the plaintiff, arbitrarily pretended to assess the property of the plaintiff as hereinbefore alleged.

XIII.

That the said pretended assessment so made by the said assessor was made without ascertainment of the facts regarding the value of said property, without an investigation or inspection thereof, or a request to be permitted to inspect the same or notice to the plaintiff that he desired to inspect the same or any further inquiry as to the value of the same, and without an investigation of the books, records and papers of this plaintiff which would have shown both the cost thereof and full cash value thereof; and plaintiff alleges the said assessor [9] was requested to go and examine said property by plaintiff, but declined and refused to make such inspection.

XIV.

Plaintiff further alleges upon information and belief that during the year 1911 the said defendant assessor assessed practically all of the other property within the County of Kootenai, State of Idaho, save and except that owned by this plaintiff and described by the said assessor in his said pretended assessment-rolls as follows:

At a value of not to exceed from 30% to 60% of the actual cash value of said property. Plaintiff alleges that all of the other property in Kootenai County save and except the property of this plaintiff was during the year 1911 assessed at not to exceed from 30% to 60% of its actual cash value.

XV.

That in pretending to reach the actual and full cash valuation of the property of this plaintiff, the said assessor did fraudulently, wrongfully, arbitrarily and without investigation or attempt to secure information, assess the property of this plaintiff hereinbefore described at more than twice its actual cash value, and thereupon extended the same upon the said pretended assessment-rolls as the said assessment so arrived at by him as the full cash value thereof.

XVI.

Plaintiff further alleges that the said assessor wrongfully and unlawfully, for the purpose of compelling the plaintiff to pay an unjust and unreasonable proportion of the taxes of the said Kootenai County, State of Idaho, wilfully and knowingly assessed the property of this plaintiff at more than twice its actual and full cash value, and the said assessor wrongfully [10] and unlawfully intended and was intending at all such times to assess the property of this plaintiff at more than twice its actual cash value and thereby compel this plaintiff to pay many times the amount of its just proportion of the taxes of Kootenai County, Idaho.

That after said pretended taxes had been ex-

tended by the said assessor upon his pretended tax-rolls, the county auditor of the said County of Kootenai delivered said assessment-rolls to the tax collector of said county for the collection of said taxes.

XVII.

Plaintiff further alleges that the said assessor discriminated against this plaintiff and in favor of all other owners of property in the County of Kootenai, and particularly against this plaintiff and in favor of the other owners of property of similar character and class and of property used for manufacturing purposes, and in favor of the other owners of machinery and against this plaintiff; and plaintiff alleges that as a result thereof it is required to bear more than its just burden of taxes within the said County of Kootenai, and that the taxes pretended to be assessed and levied against the other property within the County of Kootenai of similar character are not uniform as required by the laws and Constitution of the State of Idaho, the property of this plaintiff being taxed at a greater rate proportionately than the property of the same class of other persons and corporations. That in all instances property used for manufacturing purposes and property held and owned by individuals or corporations organized under the laws of the State of Idaho and particularly by residents and citizens of Kootenai County of the same character and class as [11] the property of plaintiff were not assessed for more than 60% of their full cash value, and none of them in excess of their cash value, whereas, the property of this plaintiff as described above was assessed at

more than its actual cash value and more than twice its actual cash value, all of which constitutes unlawful and wrongful discrimination against this plaintiff and in favor of other taxpayers in said Kootenai County.

XVIII.

That by reason of the facts hereinbefore set forth a fraud has been committed against this plaintiff and the property of the plaintiff overvalued as compared with other property in the County of Kootenai of the same kind and character, and as compared with all other property in the County of Kootenai, and plaintiff has been so discriminated against in the said pretended assessment as that it is required thereby, if the same be legal, to pay more than its just proportion of the taxes of said county, and a gross injustice has been done plaintiff and a gross discrimination in the assessment and taxation of the property of the plaintiff existed and does exist in Kootenai County.

XIX.

Plaintiff further alleges that the said assessor did so wrongfully, arbitrarily and unjustly assess and pretend to assess and value the plaintiff's property through prejudice and bias against the plaintiff, for the reason that it is a foreign corporation, and for the further reason that the plaintiff is now and was during the said year 1911 in litigation with various persons in the County of Kootenai, State of Idaho, many of whom had or claimed to have political power and influence, and was seeking to acquire, condemn and appropriate [12] a considerable

quantity of lands in the said County of Kootenai, State of Idaho, overflowed by its said dam for power development, and that bias and prejudice exists and existed during the said year 1911 in the said Kootenai County against this plaintiff because of the pendency of the said actions wherein it sought to acquire and condemn the said land, and that the said assessor acted for the said reasons, among others, in so wrongfully, fraudulently and unlawfully assessing the property of this plaintiff.

XX.

Plaintiff further alleges that at the regular meeting of the Board of Equalization of Kootenai County, Idaho, held in the month of July, 1911, this plaintiff appeared and made application to the County Board of Equalization for a reduction of the values placed upon its property hereinbefore referred to, including the said railroad bridge and spur. That the plaintiff filed before the said Board of Equalization of the County of Kootenai, State of Idaho, a petition in writing verified by the General Manager and Agent of this plaintiff, a copy of which said petition is attached hereto, marked Exhibit "A" and made a part of this complaint, which was the day which the said board had fixed for the hearing of this plaintiff concerning the valuations placed by the said assessor upon its said property.

That thereupon witnesses were called on behalf of the plaintiff, and under oath testified before the said board and were examined by the said board and its attorney, and at which said meeting the said assessor was present, and also made a statement to

the said board, and at said hearing this plaintiff [13] made a showing of facts, and showed to the said board that the said valuations so pretended to be placed upon its said property by the said assessor were wrongful, excessive and more than twice the actual cash value and full cash value of the property hereinbefore described, and it appealed to the said Board of Equalization for relief. That the said matter was taken under advisement by the said board, and thereafter and on the 28th day of July, 1911, the said board passed upon the application of this plaintiff, and ordered that the assessment on a certain building located on the Indian Reservation be reduced from \$600 to \$25, and the assessment on a branch power line in Kootenai County be reduced from 25 miles to 23 miles; and as to all of the balance of plaintiff's application and petition, the said Board of Equalization arbitrarily, in conflict with the facts so before it, unjustly, wrongfully and illegally declined, refused and neglected to give to plaintiff any relief whatever, and ordered the said assessment so pretended to have been made by the said assessor to stand as the assessment upon the plaintiff's property hereinbefore described.

That the said action of said Board of Equalization in sustaining the said overvaluation in the said assessment of plaintiff's property constituted an unlawful and illegal and fraudulent discrimination against this plaintiff and in favor of all other owners of property in the County of Kootenai, State of Idaho, and constituted a discrimination as against the property of this plaintiff and the assessed valu-

ation thereof as compared to other property of like class and character in the County of Kootenai, State of Idaho.

XXI.

Plaintiff further alleges that at the said hearing this plaintiff requested the said board, either by themselves or by [14] some competent person selected by them for that purpose, at the expense of the plaintiff, to make a physical investigation and examination of the property of the plaintiff for the purpose of determining its full and actual cash value, and plaintiff offered to submit to the said board or any person selected by it, its books, papers and records showing the actual cost and full cash value of all of said property and in addition thereto to turn over to the said board or its representative for investigation and examination all of its books and records for the purpose of showing the production of the said plant, its earnings and expenses in connection with the maintenance and operation thereof for the purpose of ascertaining the full and actual cash value thereof, or for the purpose of assisting the said board in arriving at a fair and just assessment of the said property and a fair and just determination of its full cash value.

That the said board declined, refused and neglected to accept the said offer of the plaintiff or to appoint any such person or to make any such investigation or investigations, but arbitrarily and without investigation or attempt to secure information, and in direct conflict with the facts as shown by the testimony produced before the board, affirmed and

confirmed the action of this defendant, Fred E. Wonnacott, in so wrongfully, illegally, fraudulently and arbitrarily assessing or pretending to assess the said property of the plaintiff at a sum far in excess of its full and actual cash value.

That at said hearing before said board there was no testimony or evidence supporting, justifying or showing or pretending to show the value of said property of the plaintiff to be as [15] assessed by the said assessor, and the said assessor simply submitted, without investigation, inspection or knowledge of the full or actual cash value of said property a statement, which said statement showed the bias and the prejudice which the said assessor had against this plaintiff; and the said board wilfully, wrongfully, arbitrarily and fraudulently, without further or other investigation and without justification in the facts before it, denied relief to this plaintiff and ordered that the said pretended assessment so pretended to have been made by the said assessor to stand.

XXII.

Plaintiff further alleges that the said Board of Equalization was biased and prejudiced against this plaintiff. That one member, to wit, John L. Ferguson, was in litigation with this plaintiff at the time he sat upon the said board and during the entire year 1911. That the said Ferguson entertained bitter personal bias and prejudice against this plaintiff. That at the time the said Ferguson sat and acted as a member of said board and during the year 1911, there was pending in the Circuit Court of the

United States for the District of Idaho, Northern Division, an action brought on behalf of this plaintiff to acquire certain low lands owned by the said Ferguson. That the said Ferguson had appeared in litigation as a witness against this plaintiff; that in addition thereto there was pending in the said Circuit Court of the United States for the District of Idaho, Northern Division, a suit by the said Ferguson against the plaintiff for damages in the sum of \$8,000; that the said Ferguson repeatedly demanded and asked of this plaintiff large and exorbitant sums in settlement of said litigation, and for the said lands which the plaintiff required [16] in the performance of its public duty. That the said Ferguson demanded of this plaintiff the sum of \$7,500 in settlement thereof, and in his complaint asked for the sum of \$8,000, which said sums were exorbitant and unreasonable; and when the said cause was tried out and determined before referees appointed by the Circuit Court of the United States for the District of Idaho, Northern Division, the said Ferguson was allowed the sum of \$1,779.25, with interest thereon as the full value of the said lands so sought to be acquired by plaintiff and the damage to the remainder thereof by reason of its severance, which said report of referees was filed December 11, 1911. That the said Ferguson, because this plaintiff did not submit to his exorbitant and unreasonable demands, entertained hostile and bitter feelings against this plaintiff, and plaintiff alleges that he is informed and believes and therefore upon such information and belief states the facts to be that the said Ferguson,

while running for the office of County Commissioner did in a large measure base his campaign upon the fact that he was opposed to this plaintiff and hated this plaintiff.

XXIII.

That the application of this plaintiff so made to the Board of Equalization was as hereinbefore alleged of no avail and fruitless and said board declined, neglected and refused to render unto this plaintiff the relief to which it was entitled.

Plaintiff alleges that it has exhausted the remedies provided by the statutes of the State of Idaho to secure a just valuation and assessment upon its property.

XXIV.

Plaintiff alleges that thereafter by an order of the State Board of Equalization all real property in the County of Kootenai, State of Idaho, was reduced 15%, including the property [17] of this plaintiff, but that it was all real property, and that the said unjust, unreasonable and illegal and fraudulent discrimination still exists, and that the said order of the State Board of Equalization did not in any wise affect the discrimination as against this plaintiff and in favor of all other real property in the County of Kootenai, State of Idaho.

XXV.

Plaintiff further alleges that the method which was adopted by the said assessor in assessing the said property was an incorrect and improper method in this, that the said lands herein described, together with the dams, buildings and machinery,

constitute together a power plant, and that the same and the whole thereof should be assessed as one item, namely, the said lands, together with the dams, power plant, machinery, buildings and equipment situated thereon.

Plaintiff further shows that the lands described as follows:

On page 11, Book 1 of Deeds, situate in Sec. 3 and 4, Township 50, Range 5.

On pages 412 and 413, Book "U" of Deeds in Sec. 3, Township 50, Range 5.

On pages 460 to 465 inclusive, Book 9 of Deeds, in Sec. 3, Township 50, Range 5.

On page 97, Book 34 of Deeds, Grist-mill in Sec. 3, Township 50, Range 5.

constitute one piece of property, all of which is adjoining and contiguous, and should be assessed as one piece of property, and each piece is necessary to the other in the improvement of said water power.

XXVI.

Plaintiff alleges that said assessor adopted with reference to the assessment of the property of this plaintiff a different system from that of other manufacturing plants and property [18] in the said county in pretending to segregate its said property, all of which is contiguous and is a part of one manufacturing plant, whereas with reference to all other manufacturing plants and property in the said Kootenai County, the said assessor has not pretended to segregate the machinery and buildings, but has assessed the same together as one piece of property; and plaintiff alleges that that is the only method by

which the same can be fairly and reasonably assessed.

Plaintiff further alleges that if the said property is to be segregated out in substantially the same manner as the same has been assessed, that the said assessments should not exceed the following amounts:

Certain property situated near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds, and on pages 412 and 413 of Book U of Deeds, containing 270 acres more or less.

That certain property described as pages 460 to 465 of Book 9 of Deeds in Township 50, North of Range 5 W., B. M., in Section 13 thereof.

That certain land with a certain grist-mill situated in Section 3, Township 50, North of Range 5 W., B. M., the property being described on page 97, Book 34 of Deeds, \$97,986.40.

All dams and fixtures therein at Post Falls, \$331,626.00.

All buildings connected with power plant and used in connection therewith, and mentioned above, \$100,205.00.

All machinery in power-house and connected with power plant, \$313,236.00.

XXVII.

Plaintiff further alleges that it is impossible for it [19] and that it was impossible for the said assessor to segregate the value of the various dams. That in the construction thereof the cost of said dams was kept by the plaintiff as one item and one dam is valueless and useless without the others.

Plaintiff further alleges that the full cash value of the following described property, to wit:

That certain property situate near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds, and on pages 412 and 413, Book "U" of Deeds;

That certain property described on pages 460 to 465, Book 9 of Deeds, situate in Section 13, Township 50 N., R. 5 W., B. M.

That certain parcel of land with a grist-mill, situated in Section 3, Township 50 North, Range 5 W., B. M., the property being described on page 97, Book 34 of Deeds;

Bear Trap dam and small dam at Post Falls in Section 3, township 50 N., R. 5 W., B. M.

Building and excavating in section 4, Township 50 N., R. 5 W., B. M.

Machinery on Island No. 2 in Section 4, Township 50 N., R. 5 W., B. M.

Concrete foundation and dam in Section 4, Township 50, N., R. 5 W., B. M.

was not in excess of the sum of \$843,053.40 on the second Monday in January, 1911. That if the value of said property on the said second Monday in January, 1911, has been based upon its actual cost to the plaintiff, that the value thereof would not exceed the sum of \$854,339.42, and that based upon its earning capacity, the said property could not in any event be held to be any greater value than the sum of \$843,053.40.

XXVIII.

Plaintiff alleges that if the plaintiff is to be per-

mitted to make an earning of 10% per annum upon its said investment, which as plaintiff alleges is a reasonable return and no more, any assessment in excess of the sum of \$843,053.40 would be an unreasonable and unjust and excessive assessment and would reduce the earnings from the said plant and said property hereinbefore described below 10% upon said property. And if the full cash value of said property should be determined, based upon the earning capacity, then the full cash value [20] thereof on the second Monday in January, 1911, did not exceed the sum of \$843,054.40, and that if the actual cost thereof to the plaintiff is to be determined, the value of said property did not exceed the sum above given, to wit, \$854,339.42.

XXIX.

Plaintiff further alleges that the said business in which the plaintiff is engaged of generating, distributing and selling electric power and energy, should return 10% upon the investment. That the same is a hazardous investment, subject to many changes as knowledge concerning electricity, its generation and transmission is developing, and that such an investment is not a safe one unless the investor is permitted to earn 10% thereon. That moreover the demand for electricity fluctuates. That the plaintiff in large measure, for the sale of the electricity generated at the said plant, depends on the mines and concentrators situated in Shoshone County, Idaho; that the demand for electricity from that source is not constant, but fluctuates, and the return upon the said investment is hazardous and depends upon the

market for the products of the said mines, the stability and permanency of the mines. That plaintiff is informed and believes and upon such information and belief alleges the fact to be that in mining it is considered that the investor should receive at least the sum of 14% upon the said investment. That a large part of plaintiff's investment depends upon and is dependent upon the production, stability and life of the mines of said Coeur d'Alene Mining District, and that by reason of all of said facts the said return of 10% is not excessive, but is a just and reasonable return for such a hazardous investment. [21]

XXX.

Plaintiff further alleges that that property assessed against this plaintiff and described on the said pretended assessment-roll as "Railroad spur and bridge" assessed at \$48,740, was a small spur and bridge across one of the channels of the Spokane River, constructed as a temporary spur at the time of the construction of said power plant; that the same has not since been used by the plaintiff. That the bridge is not worth in excess of the sum of \$2,000; that the same did not cost to exceed \$5,000 when new and has practically no use at this time as it was put in for temporary use.

Plaintiff further says that the rails thereon were not the property of the plaintiff, but were simply borrowed from the Northern Pacific Railway Company for use in the construction of said power plant. That the said rails did not on the second Monday in January, 1911, have a value in excess of the sum of \$2,500; that the said railroad spur had been aban-

done prior to the second Monday in January, 1911, and the Northern Pacific Railway Company had been requested to remove the said rails. That the said property so assessed at said sum of \$48,750 had no value whatever, except the value of the rails and the small present value of the railroad bridge; and plaintiff says that the said property last described was assessed at far in excess of its full cash value on the second Monday in January, 1911.

XXXI.

Plaintiff further alleges that in Kootenai County there are large areas of valuable farm lands worth from \$200 to \$300 per acre and so valued and held by the owners thereof, having an actual cash value of from \$200 to \$300 per acre and a market [22] value of from \$200 to \$300 per acre on the second Monday in January, 1911. That the said assessor wilfully, knowingly and designedly placed the same upon the assessment roll and listed the same at a valuation of from \$100 to \$125, thereby intending to favor the owners of said irrigated lands and to discriminate against this plaintiff and establish in respect to the same a different system of valuation than that which he used with reference to the property of the plaintiff, in the one case assessing the said farm lands at from 30% to 60% of their actual cash value and in the case of the plaintiff's property assessing the same at more than twice its actual cash value, thereby creating a gross, unequal valuation of the property of the plaintiff compared with the farming property situated in the said Kootenai County, and thereby placing and intending to place and attempt-

ing to place an unequal burden upon this plaintiff, all of which constitutes fraud against this plaintiff, and is an attempt on the part of said assessor and said Board of Equalization to throw upon the plaintiff a larger taxation than is just and equal.

XXXII.

Plaintiff further alleges that it generates the said power as a public service corporation; that the property of other public service corporations in the County of Kootenai, State of Idaho, as assessed by the said assessor during the year 1911 at not to exceed from 30% to 60% of its actual cash value, and that all property of public service corporations in Kootenai County except the property of this plaintiff, was during the year 1911 assessed at not to exceed 30% and 60% of the actual cash value thereof; and the property of this plaintiff was assessed at more than twice the full and actual cash value thereof, and proportionately higher than other property of like kind and character for the purpose of and with the intention of discriminating [23] against the plaintiff and in favor of the other public service corporations in said Kootenai County, in order to burden this plaintiff with more than its share of the taxes of said county.

XXXIII.

Plaintiff further alleges that on the — day of December, 1911, it tendered to the tax collector of Kootenai County, Idaho, authorized by law to receive and receipt for said taxes, all taxes that were due or might be levied upon the property hereinbefore described, in the sum of \$13,878,25, which sum

so tendered in payment of said taxes was all that could be legally levied upon said property, and which said sum the assessor and *ex-officio* tax collector refused to receive or receipt for, and the said assessor and *ex-officio* tax collector did refuse to accept the same and credit the same upon taxes assessed against the plaintiff for the County of Kootenai, State of Idaho, and did state to this plaintiff that he would accept no sum whatever except the full amount of taxes pretended by him to be assessed and extended upon the tax-roll, at the said unlawful, fraudulent and grossly unjust assessment hereinbefore referred to.

XXXIV.

Plaintiff further alleges that the plaintiff made the said tender upon the basis of valuation for assessment purposes of \$854,339.42. That the said basis upon which this plaintiff tendered the said money was greater than the valuation for assessment of other property of like kind, character and value within the County of Kootenai, State of Idaho, and was upon the full cash value thereof, whereas, all other property in [24] the County of Kootenai, State of Idaho, was assessed at less than its full cash value during the year 1911. And plaintiff alleges that the said tender was upon an eminently proper and just valuation, and upon the full cash value of its property.

That at the time of the said tender to the said tax collector, plaintiff stated to the said tax collector that it did not ask a receipt in full, but simply offered to pay that money which it admitted was the levy upon

its property assessed at its full cash value. That the said tax collector stated to plaintiff that he would not receive or receipt for any sum as taxes on said property of the plaintiff less than the total tax levied upon the same. Plaintiff alleges that it has tendered the amount legally due upon the said property to the said tax collector, and that plaintiff has been at all times and is now ready and financially able to pay any and all fair and just taxes levied against the said plaintiff's properties and each and all thereof, and to pay any and all taxes justly and legally due upon its said property and upon every part thereof and upon all thereof, and that it has at all times so advised the defendants, and plaintiff now offers to bring into Court and to deposit with the Court or with the clerk thereof, or in such depository as the said Court shall direct, such sum of money as the Court shall direct to be applied for the payment of all or any taxes, such taxes as the Court shall adjudge to be justly and equitably due upon the property of the plaintiff hereinbefore described.

Plaintiff further offers and agrees to pay any and all taxes which may be adjudicated herein to be just and equitable, which said taxes this plaintiff here and now agrees to pay.

XXXV.

Plaintiff further alleges that the defendants wrongfully pretend that the plaintiff is indebted to the said Kootenai [25] County, Idaho, for taxes as follows, to wit:

That property described on page
11, Book 1 of Deeds, in Sec. 3

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and 4, Twp. 50 N., R. 5 W., and
on pages 412 and 413, Book
"U" of Deeds, in Sec. 4, Tp. 50
N., R. 5 W.....\$14917.50

On property described in pages
460 to 465, inclusive, Book 9 of
Deeds, in Sec. 3, Twp. 50 N., R. 5
W., B. M..... 1045.50

On property described on page 97,
Book 34 of Deeds, Grist-mill,
Sec. 3, Tp. 50 N., R. 5 W.....557.60

Bear Trap dam and small dam at
Post Falls, Sec. 3, Twp. 50 N.,
R. 5 W., B. M..... 7840.84

Building and excavating, Sec. 4,
Tp. 50 N., R. 5 W..... 3013.85

Machinery on Island #2, Sec. 4,
Tp. 50 N., R. 5 W..... 5565.

Concrete foundation and dam,
Sec. 4, Tp. 50 N., R. 5 W..... 2035.20

Railway spur and bridge..... 679.58

making a total of taxes so wrongfully demanded of
plaintiff by the defendants of \$35,655.07, all of which
taxes are levied and demanded without warrant of
law and in violation of the rights of plaintiff, save
and except the sum of \$13,878.25.

XXXVI.

Plaintiff further alleges that the said assessor and
ex-officio tax collector of Kootenai County, Idaho,
after the said tender of this plaintiff and the refusal
to accept the same, the said taxes not having been
paid for the reason hereinbefore set forth, marked
the said taxes upon the property of this plaintiff,

hereinbefore described, as delinquent and thereafter, to wit, after the first Monday in January, 1912, claimed and demanded in addition to the amount of said taxes aforesaid, a penalty upon each and every amount of said tax of 10% thereof. That the said defendants threaten that they will publish a notice in which they will offer for sale and will sell the said property belonging to the plaintiff for the amount of said taxes claimed to be due and delinquent thereon and for the said penalty and for the cost of the publication; [26] and plaintiff alleges that the said defendant tax collector will, unless restrained and enjoined by an order of this Court, so publish a notice, that he will sell, and, unless restrained by an order of this Court, will offer the lands and property of this plaintiff for sale and pretend and attempt to sell the same in the manner prescribed by law for the sale of lands for delinquent taxes, and that each and every part thereof will be separately offered for sale and be separately sold to the person who will take the least quantity of said property and pay the said pretended taxes, penalty and cost claimed to be due, and the said tax collector gives out and threatens that he will make out and deliver to the purchasers of such pieces of property so sold a certificate showing such sale, which certificate will entitle the said purchaser to a deed from the county conveying said lands and said property so purchased, at the expiration of three years if the same be not sooner redeemed.

XXXVII.

Plaintiff further alleges that the said pretended taxes constitute and are and will be an apparent lien

upon the title to the said respective pieces of property against which the same are assessed and levied, as hereinbefore set forth, and are a cloud upon the title thereto. That by the sale of said respective pieces of property described herein and threatened and intended to be sold by the tax collector as hereinbefore set forth, the said County of Kootenai and the said assessor and *ex-officio* tax collector will assign and transfer to many different parties and corporations the liens which it now claims upon the different parcels of the property, and should the said defendant carry out the threatened and expressed [27] intention of making public sale or any sale of said property of the plaintiff or any thereof for said alleged taxes as hereinbefore mentioned and set forth, the said sale would constitute a cloud upon the title of plaintiff to the property, and work great wrong and injury to the plaintiff. Plaintiff will be put to great and unnecessary costs for which it can receive no compensation; that at the expiration of three years if the said property be not redeemed from said sale, the purchasers thereof at such threatened sale for delinquent taxes will be entitled to and will receive deeds from the county of Kootenai, purporting to convey to the said purchasers the fee title to such property, but such deeds will be invalid upon their face and will constitute and be a cloud upon the title to such respective pieces of property, greatly impairing and destroying their market value to the plaintiff.

XXXVIII.

That a large portion of said pretended taxes have

been levied and are claimed by the said defendants for the payment of taxes levied by the State of Idaho, and if said taxes should be paid by plaintiff, such portion thereof would be by the said county paid into the State treasury, and plaintiff could not recover the same or any portion thereof. That a portion thereof, as plaintiff is informed and believes, has been levied for such school district and road district purposes, and if plaintiff should pay the same, such portion would be paid over and transferred to the respective road districts and school districts, and plaintiff would, in order to recover such unlawful taxes so paid, be compelled to bring separate suits against said Kootenai County and each of said road districts and school districts, and would be thereby compelled to bring a multiplicity of suits. [28]

XXXIX.

That plaintiff has no plain, speedy or adequate remedy at law or any remedy whatsoever, save and except as herein prayed. That the value of the matter in dispute in this action exceeds, exclusive of interest and costs, the sum of Five Thousand Dollars.

WHEREFORE, in consideration of the premises, and inasmuch as your orator is remediless save in a court of equity where litigation of this and a like nature are properly cognizable and relievable, and to the end that they may appear and answer all and singular the matters and things in this bill of complaint, but without oath to their answer, your orator expressly waiving the oath of the said defendant to their answer, your orator prays:

I.

That the said defendant, Fred E. Wonnacott, assessor and *ex-officio* tax collector of the County of Kootenai, State of Idaho, his deputy and deputies, successor and successors and their deputy and deputies, and each of them, be forever enjoined and restrained from selling the property of the plaintiff described in the bill of complaint for the taxes levied, *as forth* in said bill, or from in any way proceeding to collect the same in any manner until such time as your Honors shall appoint, direct and order herein, and that an order be issued under the seal of this Court so enjoining and restraining the said defendant, his deputy and deputies, and successor and successors, and their deputy and deputies and each of them, and that upon the hearing the writ herein prayed for be continued in force until the final determination of this suit, and that thereupon the said injunction be made perpetual. [29]

II.

That the said pretended taxes be declared, and each and all thereof be declared null and void, and that the said defendant county be enjoined and restrained from asserting or attempting to assert any lien upon said several pieces of property or any thereof for or on account of said pretended taxes.

III.

That the Court ascertain and determine what taxes are fairly and equitably due upon the property of the plaintiff described in the bill of complaint, and that upon the payment thereof to the defendant tax collector, his successor or successors in office, the said de-

defendant county, its officers and agents, be required and commanded to accept the same as in full for the taxes for the year 1911, upon the said property of the plaintiff, and to enter said taxes against said property upon the books of said county as paid in full, and that the defendant county, its officers and agents and their successors in office and the successors of each of them be forever enjoined and restrained from asserting or attempting to compel any other or further taxes upon said property for the year 1911.

IV.

That the plaintiff have such other and further relief as may be consistent in the premises and with the principles of equity, including its costs and disbursements herein.

JOHN P. GRAY,
Attorney for Plaintiff.

Residence and Postoffice Address, Coeur d'Alene
Idaho. [30]

State of Idaho,
County of Kootenai,—ss.

On this 2d day of May, 1912, before me, personally appeared A. F. S. Steele, the Secretary of the Washington Water Power Company, the complainant above named, who being by me duly sworn deposes and says that he is the Secretary of the Washington Water Power Company and familiar with its business, and that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and

as to those matters he believes it to be true.

A. F. S. STEELE.

Subscribed and sworn to before me this 2d day of May, 1912.

[Notarial Seal]

F. MEADE,
Notary Public. [31]

Exhibit "A" [to Bill of Complaint].

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, STATE OF IDAHO.

A COUNTY BOARD OF EQUALIZATION.

In the Matter of the Application of THE WASHINGTON WATER POWER COMPANY for a Reduction and Equalization of the Assessment of Its Property Situated in Kootenai County, Idaho.

To the Honorable, the Board of County Commissioners of Kootenai County, State of Idaho:

The Washington Water Power Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and authorized to do business within the State of Idaho, and within the County of Kootenai, State of Idaho, hereby respectfully petitions your Honorable Board sitting as a Board of Equalization, to reduce the valuations placed upon certain of its property by Fred E. Wonnacott, Assessor and *Ex-officio* Tax Collector of Kootenai County, Idaho, for the year 1911 and respectfully represents:

I.

That it is now and at all of the times hereinafter

mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and duly authorized by virtue of a full compliance with the Constitution and laws of the State of Idaho relative to foreign corporations to do business within the State of Idaho, and is authorized by virtue of such compliance to take and hold title to property in the County of Kootenai, State of Idaho.

II.

That on the second Monday of January, 1910, it was the [32] owner of the following described property situate and being within the County of Kootenai, State of Idaho, to wit:

Certain property situated near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds, and on pages 412 and 413 of Book "U" of Deeds, containing 270 acres more or less.

That certain property described at pages 460 to 465 of Book 9 of Deeds in Township 50, North of Range 5 W. B. M. in Section 3 thereof.

That certain land with a certain grist mill situated in Section 3, Township 50 North of Range 5 W. B. M., the property being described on page 97 of Book 34 of Deeds.

A bear trap dam and other dams in the three channels of the Spokane River within the property above described.

Certain buildings and machinery constituting an electric power plant situated upon and within the property above described.

III.

That the property which has been particularly hereinbefore described has been assessed by the said Fred E. Wonnacott, Assessor and *Ex-officio* Tax Collector of Kootenai County, Idaho, in the following manner and at the following valuations, to wit:

As described at page 11, Book 1 of Deeds, and on pages 412 and 413, Book U of Deeds, containing 270 acres (power site)	\$1,080,000.00
Lots 1, 2, 3, and 4, Section 9, Township 54, and Lots 1, 2, 3, and 4, Section 8, Township 50	21,905.00
As described at pages 460 and 465, Book 9 of Deeds, Section 3, Township 50 North of Range 5.....	75,000.00
As described at page 97, Book 34 of Deeds, Grist Mill, Section 3, Town- ship 50, North of Range 5 W. B. M.	40,000.00
Bear trap dam and small dam at Post Falls	562,500.00

[33]

Building and excavations	223,000.00
Machinery on Island No. 2.....	350,000.00
Concrete Foundation and dam.....	150,000.00

That the said Assessor, Fred E. Wonnacott, in making the said assessments wrongfully and unlawfully assessed the same at a sum far in excess of the full cash value of the said property, and thereby this petitioner would be compelled to pay an unjust and unreasonable proportion of the taxes of said Kootenai County, Idaho.

That the full cash value of the said property of this petitioner was not in excess of the sum of \$843,053.40 on the second Monday of January, 1911.

That the value of the said property on the second Monday of January, 1911, if based upon its actual cost to this petitioner, did not exceed the sum of \$854,339.42 and based upon its earning capacity, the said property could not in any event be held to be of greater value than the sum of \$843,053.40.

That if this petitioner is to be permitted to make an earning of 10% per annum upon its investment, which is as petitioner alleges a reasonable return and no more, any assessment in excess of the sum of \$843,053.40 would be an unreasonable, an unjust and an excessive assessment, and would reduce the earnings below 10% upon said property, and if the full cash value of the property should be determined based upon the earning capacity, then the full cash value thereof on the second Monday of January, 1911, did not exceed the sum of \$843,053.40. [34]

IV.

That in assessing the property of Kootenai County, Idaho, for the year 1911, the said Assessor has assessed all other property within the said Kootenai County save and except that owned by this applicant at not to exceed 70% of the actual cash value of said property, and the assessments which have been placed upon all other property within said Kootenai County than the property of this applicant by the said Assessor have varied from 50% to 70% of the actual cash value as this applicant is informed and believes and therefore alleges the facts to be.

V.

Petitioner alleges that it is entitled to have a reasonable return upon its said investment and that the sum of 10% per annum is not more than a fair and reasonable return upon its said investment. That if it is to be permitted to earn 10% per annum upon its said investment based upon such earning power, the value of the property hereinbefore mentioned does not exceed the sum hereinbefore set forth, and petitioner alleges the fact to be that its earning capacity at this time is as great as it will be in the future, and that if its valuation is to be determined by what it will earn, that the value thereof on the second Monday of January, 1911, was the sum of \$843,053.40.

VI.

Petitioner alleges that the method which has been adopted by the said assessor in assessing the said property is an incorrect and an improper method. That the said lands herein described, together with the dams, buildings and machinery, constitute together a power plant, and that the same and the whole thereof should be assessed as one item, namely, the [35] lands hereinbefore described, together with the dams, power plant, machinery, buildings and equipment situate thereon. Petitioner further shows that the lands described as follows:

Certain property situated near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds and on pages 412 and 413 of Book "U" of Deeds, containing 270 acres more or less;

That certain property described at pages 460 to 465 of Book 9 of Deeds in township 50 North of Range 5 W. B. M. in Section 13 thereof;

That certain land with a certain grist mill situated in section 3, township 50 North of Range 5 W. B. M. the property being described on page 97 of Book 34 of Deeds, constitute the lands along and about the said water fall, and together constitute one piece of property, all of which is adjoining and contiguous, and should be assessed as one piece of property and each is necessary to the other in the enjoyment of said water power.

Petitioner further says that if the said property is to be segregated, however, in substantially the manner that it has been by the said assessor, that the said assessments should not exceed the following amounts:

The land consisting of the three items mentioned above	\$ 97,986.40
All dams and fixtures therein, at Post Falls	331,626.00
All buildings connected with power plant and used in connection therewith and mentioned above	100,205.00
All machinery in power-house and con- nected with power plant.....	313,236.00

Petitioner alleges that it cannot segregate the value of the various dams, as the cost thereof has been and was by it kept as one item, and one dam is useless and valueless without the others. [36]

VII.

Petitioner further respectfully calls the attention

of this Honorable Board to the assessment levied against certain property of it described by the said assessor as a "railroad spur and bridge" assessed at \$48,750.00. Petitioner says that the said spur and bridge were constructed as a temporary spur at the time of the construction of its said power plant; that the same has not been since used by it; that the bridge is not worth in excess of the sum of \$2,000.00; that the same did not cost to exceed \$5,000.00 when new, and has practically no value at this time as it was put in for temporary use. Petitioner further says that the rails thereon are not the property of this petitioner, but were simply borrowed from the Northern Pacific Railway Company for use in the construction of the said power plant, and that the said rails did not on the second Monday of January, 1911, have a value in excess of the sum of \$2,500.00. That the said railroad spur has been abandoned and the Northern Pacific Railway Company requested to remove the said rails, and said property has no value whatever except the value of the rails and the small present value of the railroad bridge, which can be used for crossing the said Spokane River if an expenditure be made thereon and the said bridge be planked and put in condition for use. Petitioner further shows that it is advised by its counsel and therefore alleges the fact to be that the assessment upon the said railroad spur should be made by the said Board of Equalization.

VIII.

Petitioner further shows that the piece of property assessed as "Building on reservation, \$600.00,"

was a small frame structure put on the Coeur d'Alene Indian Reservation [37] which has long since been abandoned by petitioner and which is of no value, and petitioner has offered to sell the same for \$25.00.

IX.

That the said valuation and assessment on the property of this petitioner is excessive, and that it is out of proportion to the assessed valuation of other property of like character in the said County, and is in violation of law and is in excess of the full cash value thereof on the second Monday of January, 1911.

WHEREFORE, petitioner prays that the assessment and valuation upon its said property may be reduced and equalized as stated above.

THE WASHINGTON WATER POWER
CO.

By C. S. MacCALLA,
General Manager.

JOHN P. GRAY,
Coeur d'Alene, Idaho,

CHAS. L. HEITMAN,
Spirit Lake, Idaho,

Attorneys for Petitioner. [38]

State of Idaho,
County of Kootenai.

C. S. MacCalla, being first duly sworn, on his oath deposes and says.

That he is the General Manager and agent for petitioner, The Washington Water Power Company. That he has read the foregoing petition, knows the

contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein alleged on information and belief, and as to those matters and things he believes it to be true.

C. S. MacCALLA.

Subscribed and sworn to before me this 17th day of July, A. D. 1911.

[Seal]

JOSEPH B. HOGAN,
Notary Public.

[Indorsed]: Filed July 17, 1911. D. E. Danby, Clerk of the Board of County Commissioners. By W. C. Quarles, Deputy.

[Endorsed]: Filed May 6, 1912. A. L. Richardson, Clerk. [39]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

**THE WASHINGTON WATER POWER COM-
PANY, a Corporation,**

Plaintiff,

vs.

**KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and *Ex-officio* Tax Collector of Kootenai
County, Idaho,**

Defendant.

Demurrer.

The demurrer of the above-named defendants, Kootenai County, a municipal corporation, and Fred E. Wonnacott, as Assessor and *Ex-officio* Tax Col-

lector of Kootenai County, Idaho, to the bill of complaint of the above-named plaintiff.

These defendants by protestations not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the said bill of complaint and for causes of demurrer show:

I.

That the plaintiff has not in and by its said bill of complaint made or stated such a case as entitles it in a court of equity to the relief prayed by the bill, or to any discovery or relief from or against these defendants, or either of them, touching the matters contained in the said bill, or any of such matters.

II.

That it appears from the said bill of complaint of plaintiff that this court has no jurisdiction to hear and determine [40] this action for the following reasons:

(a) That it appears upon the face of the said bill of complaint that the plaintiff has an adequate remedy at law.

(b) That it appears upon the said bill of complaint that plaintiff had an adequate remedy at law of which it failed to avail itself in this,—that plaintiff failed and neglected to apply to the Board of County Commissioners of Kootenai County, for the reduction of the assessed valuation of its property in said County, or for the correction of the alleged erroneous assessments thereof at the time and in the manner provided by the laws of the State of Idaho.

(c) That the plaintiff had and still has a full, complete and adequate remedy at law under the laws of the State of Idaho, by paying the taxes assessed upon its property and then applying to the Board of County Commissioners of said County for a refund of such portions thereof, as it is entitled to by reason of any erroneous assessment of its property.

(d) That the levy and assessment of taxes is a legislative and not a judicial function, and this Court has no power to make or cause to be made, a new assessment of the property of the plaintiff.

(e) That it is not shown in said bill of complaint that the property therein described was assessed at more than its full cash value.

(f) That plaintiff has not alleged in said bill of complaint what plaintiff claims to be the full cash value of the property in question.

III.

That the said bill of complaint of plaintiff is wholly without equity.

(a) Because the plaintiff had a plain, speedy and adequate remedy at law by applying to the Board of Equalization of said County for a reduction of the assessed valuation of its property, [41] or for the correction of any alleged erroneous assessment thereof, and failed to avail itself of such remedy.

(b) That the plaintiff had and still has a plain, speedy and adequate remedy at law by paying the taxes assessed upon its property and then applying to the Board of County Commissioners of said County, for a refund thereof, of which remedy it failed to avail itself.

(c) Because the plaintiff failed to pay the taxes conceded by it to be due upon its property and failed to make an unconditional tender thereof, or such a tender thereof as would entitle it to maintain this action.

(d) That plaintiff failed to state in said bill of complaint the full cash value of the different items of property assessed by the assessor of Kootenai County.

IV.

That it appears upon the face of the said bill of complaint that there is a defect of parties defendant in this,—that the school districts and road districts, which plaintiff alleges are entitled to receive a portion of the taxes levied upon its property, are not made parties defendant herein.

V.

That it affirmatively appears from the said bill of complaint that plaintiff has a complete, speedy and adequate remedy at law or that if plaintiff has not now such remedy, that the said remedy at law has been lost by the unexcusable lack and negligence of the said plaintiff.

VI.

That it conclusively appears from the face of the said complaint that the plaintiff is barred from seeking relief by injunction or any equitable relief by reason of its unexcusable laches and negligence in not sooner bringing its action for the reduction of the taxes alleged by it to be *accessive*.

VII.

That said complaint or bill in equity is uncertain

on the [42] following particulars, to wit:

(a) That it nowhere appears in the said complaint or bill in equity what the full cash value of the land therein described was at the time said levy or assessment complained of was made.

(b) That it does not appear from said bill of complaint or bill of equity in what amount the assessment complained of was in excess of the full cash value of the property therein described.

(c) That it does not appear from said bill of complaint or bill in equity in what school districts or road districts the property of the said Washington Water Power Company, mentioned in said bill of complaint is situated or located.

(d) That it does not appear from said bill of complaint or bill in equity as to what the rate of taxation for State and county purposes was for the year 1911, so that the exact amount of taxes for State and county purposes for said year could be figured, if the exact valuation of said property could be arrived at by said Court.

(e) That it does not appear what the special levies for the road districts or school districts were in which the property of said Washington Water Power Company was situated or located, so that the exact amount of taxes could be ascertained, if the true valuation was arrived at on the property in each of said school districts or road districts in which the property of said Washington Water Power Company is situated or located.

VIII.

That said bill of complaint or bill in equity does

not state sufficient facts to entitle the said plaintiff to the relief prayed for in said bill of complaint or bill in equity, or any relief whatever. [43]

WHEREFORE, defendants pray the judgment of this Honorable Court whether they shall be compelled to make further or any answer to the said bill of complaint or to any other matters and things therein contained and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

N. D. WERNETTE,
ROBT. H. ELDER,
Solicitors for Defendants.

Residence and P. O. Address, Coeur d'Alene, Idaho.

We hereby certify that the foregoing Demurrer is, in our opinion, well founded in point of law.

Dated at Coeur d'Alene, Idaho, this 25th day of May, A. D. 1912.

N. D. WERNETTE,
ROBT. H. ELDER,
Solicitors for Defendants.

Residence and P. O. Address Coeur d'Alene, Idaho.

[44]

State of Idaho,
County of Kootenai,
District of Idaho,
Northern Division,—ss.

Fred E. Wonnacott, being being first duly sworn, upon oath deposes and says: I am the Assessor and *Ex-officio* Tax Collector of Kootenai County, State of Idaho, and one of the above-named defendants, and make this affidavit for and on behalf of said

Kootenai County and said defendants, and that the foregoing Demurrer is not interposed for delay.

FRED E. WONNACOTT.

Subscribed and sworn to before me this 27th day of May, 1912.

[Seal]

N. D. WERNETTE,

Notary Public.

[Endorsed]: Filed May 27, 1912. A. L. Richardson, Clerk. [45]

Order Overruling Demurrer.

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Thursday, the 6th day of June, 1912.

No. 535.

THE WASHINGTON WATER POWER COMPANY

vs.

KOOTENAI COUNTY, IDAHO.

In accordance with stipulation on file, it is ordered that the demurrer to the complaint in this cause be and the same is hereby overruled, and the said defendant is given until June 20th, 1912, in which to file and serve its answer. [46]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Answer.

The defendants, Kootenai County, a municipal corporation, and Fred E. Wonnacott, as Assessor and Ex-officio Tax Collector of Kootenai County, Idaho, now and at all times hereafter, saving and reserving unto themselves all preferences and advantages of exceptions which can or may be had or taken to the many errors, uncertainties and other imperfections in said complainant's bill of complaint, contained, for answer unto, or unto so much and such parts thereof as these defendants are advised is, are material or necessary for them to make answer unto, these defendants answering say:

I.

They and each of them admit each and every allegation contained in paragraphs No. 1, 2, 3, 4, and 5, of said bill of complaint.

II.

Answering paragraph VI of said bill of complaint, these defendants admit that the Assessor of Koo-

tenai County, preparatory to assessing the lands of the plaintiff in said [47] county for the year 1911, made a request of the plaintiff for a list of its said lands and property in said county; but these defendants and each of them deny that thereafter the plaintiff caused to be made or transmitted to said Assessor a list truly or correctly setting forth or describing all of the lands or property owned by the plaintiff, or situated in said County of Kootenai, State of Idaho; and on the contrary defendants allege that the said plaintiff furnished the assessor a list of property, but said list did not contain all of the property of said Washington Water Power Company in Kootenai County, but the said plaintiff, the Washington Water Power Company, failed, neglected and refused to list a pole line known as the Pend de Oreille Pole Line in Kootenai County, being about 23 miles long; also a building located at or near Cataldo, in Kootenai County, Idaho, of sheet-iron construction, in which is contained a large amount of valuable machinery, none of which was listed by said plaintiff on the list which it furnished to the said Assessor.

III.

Answering paragraph VII, of plaintiff's bill of complaint, these defendants, and each of them deny that the said Assessor or his deputies or assistants, or anyone acting or pretending to act for him or in his behalf, did not subsequently demand or request of or from the plaintiff any statement under oath, or at all, setting forth specifically, or at all, the real or personal property or any property owned or controlled by plaintiff, either on the second Monday of

January, 1911, at the hour of 12 o'clock noon, or at any time, or that no other or different request or demand for the statement of the property of plaintiff for the purposes of assessment *of* for any purposes was made upon the plaintiff by said assessor, his deputies or assistants, or any of them, than the said request hereinbefore referred to, or that the said assessor advised the plaintiff at the time [48] the said list was delivered to him, that that was all that he wanted or required or desired from the plaintiff.

IV.

For answer to paragraph VIII of plaintiff's bill of complaint, these defendants, and each of them, admit that the said assessor did not, nor did any of his deputies or assistants at any time in said year 1911, fill out or deliver to the plaintiff a statement of the property of the plaintiff or present or deliver any statement to the plaintiff; but deny that the assessor did not require plaintiff to fill out any such statement or return any such statement to said assessor properly filled out; and defendants allege that the Assessor of Kootenai County demanded of the said plaintiff that it make and furnish to the said assessor a list of its property in Kootenai County, as required by law; but that said plaintiff failed, neglected and refused to make and furnish said list to the said assessor.

V.

Answering paragraph IX of plaintiff's bill of complaint, these defendants, and each of them, admit that the said list delivered by the plaintiff to said assessor was duly received by said assessor, and was

accepted and filed by him, and that no entry by said assessor or by anyone was made or noted in said assessor's book of assessments of said Kootenai County opposite the name of the plaintiff, or at all, of any refusal by the plaintiff to give under oath, or at all, a statement of its property, real and personal in said County, or of any refusal by the plaintiff to comply with any of the requirements of the laws of the State of Idaho, but these defendants deny that in truth or in fact the plaintiff did not fail or neglect or refuse to comply with the requirements made by the assessor, and the requirements under the law of the State of Idaho; and in this regard defendants allege that the said plaintiff did fail, neglect and refuse to deliver to said [49] assessor for the year 1911, a true statement of its property in Kootenai County as required by said assessor and as required by the law of the State of Idaho.

VI.

Answering paragraph X of plaintiff's bill of complaint, said defendants, and each of them, admit that during the year 1911, the said assessor of Kootenai County, Idaho, made his assessment of plaintiff's property in said Kootenai County, for the purpose of levying taxes against the said property for the year 1911, for state, county and other purposes, and prepared and made a certain assessment-roll wherein he set forth the description of the property to be assessed by him, and the valuation at which said property of the plaintiff was assessed, and in said roll the said assessor set forth and described as the property of the plaintiff, those certain tracts and

parcels of land and other property of the plaintiff, as follows:

On page 11, Book 1 of Deeds, situate in Sec. 3 and 4, Twp. 50, Range 5.

On pages 412 and 413, Book "U" of Deeds, in Sec. 3, Twp. 50, Range 5.

On pages 460, 461, 462, 463, 464 and 465, Book 9 of Deeds in Sec. 3, Twp. 50, Range 5.

On page 97, Book 34 of Deeds, Grist-mill in Sec. 3, Twp. 50, Range 5.

Bear trap dam and small dam at Post Falls in Section 3, Twp. 50, Range 5.

Buildings and excavating in Sec. 4, Twp. 50, Range 5.

Machinery on Island #2, Sec. 4, Twp. 50, Range 5.

Concrete foundation and dam, Sec. 4, Twp. 50, Range 5. Railway spur and bridge.

being the same property which was and is in fact the property particularly described in paragraph V of plaintiff's bill of complaint. And the said assessor did in addition thereto, assess as against the plaintiff, a railroad spur and bridge situated upon said property, and said assessor did extend the same upon the said assessment-rolls and did set forth as his assessment and valuation thereof, the sum so assessed against plaintiff's property, and did list and assess the same as follows: [50]

On page 11, Book 1 of Deeds, situate in sec. 3 and 4, Twp. 50, Range 5, and on pages 412 and

60 *The Washington Water Power Company vs.*

413 Book "U" of Deeds, in Sec.	
4, Twp. 50, R. 5.....	1,080,000
On pages 460, 461, 462, 463, 464, and 465, Book 9 of Deeds in Sec.	
3, Twp. 50, Range 5.....	75,000
On page 97 Book 34 of Deeds, Grist-mill in Sec. 3, Twp. 50, Range 5.....	40,000
Bear trap dam and small dam at Post Falls	562,500
Building and excavation, Sec. 4, Twp. 50, R. 5,.....	223,000
Machinery on Island #2, Sec. 4, Twp. 50, Range 5,.....	350,000
Concrete foundation and dam, Sec.	
4, Twp. 50, R. 5,.....	150,000
Railway spur and bridge	48,750

And in addition thereto said assessor did assess the other lands and property of the plaintiff in said Kootenai County, Idaho. Defendants deny that said assessment was a pretended assessment or that said assessor did pretend to assess such property, or that said assessment-roll was a pretended assessment-roll, but allege that said property was assessed in the manner provided by law.

VII.

Answering paragraph XI of plaintiff's bill of complaint, these defendants, and each of them, admit that on the said second Monday of January, 1911, at 12 o'clock, noon, the plaintiff was the owner of all of said property, and allege that said plaintiff was the owner of said railroad spur and

bridge at said time, and that in the list which said plaintiff furnished to the assessor of Kootenai County of its property subject to taxation for the year 1911, said railroad spur and bridge was listed and designated as the property of said Washington Water Power Company.

· VIII.

Answering paragraph XII of plaintiff's bill of complaint these defendants deny that the plaintiff at or prior to the assessment of its said property by the said assessor did state to the said assessor that for the purpose of determining the cash value thereof, for purposes of taxation, said assessor was welcome to use or examine the books or records or papers or cost sheets of the plaintiff for the purpose of determining the actual cost or actual cash value thereof. [51]

Deny that the said assessor did state to the plaintiff that he did not desire plaintiff to fix in its said return the value of its said property or neglected or refused to investigate the cost sheets, books, or records of the plaintiff, for the purpose of determining the actual cost of said property or for the purpose of determining its full cash value, or neglected or refused or failed to make any real investigation or any investigation, whatever, of the value of the property of the plaintiff, above described, for the purpose of determining its full cash value, or that the said assessor in disregard of the rights of plaintiff or in violation of its rights or without notice to the plaintiff, arbitrarily pretended to assess the property of the plaintiff as hereinbefore alleged.

IX.

Answering paragraph XIII of plaintiff's bill of complaint said defendants, and each of them, deny that the said assessment so made by the said assessor was made without ascertainment of the facts regarding the value of said property, or without any investigation or inspection thereof, or a request to be permitted to inspect the same, or notice to the plaintiff that he desired to inspect the same, or any further inquiry as to the value of the same, or without any investigation of the books, or records or papers of this plaintiff, or that the said books, records or papers of said plaintiff would have shown the cost of said property of the full cash value thereof. And deny that said assessor was requested by said plaintiff or any one for it, to go and examine said property, and deny that said assessor declined or refused to make an investigation or inspection of said plaintiff's property in Kootenai County, Idaho.

X.

Answering paragraph XIV of plaintiff's bill of complaint said defendants, and each of them, deny that during the year 1911, the said defendant assessor, assessed practically all of the other [52] property or any property within the County of Kootenai, State of Idaho, save or except that owned by said plaintiff at a value of not to exceed from thirty to sixty per cent of the actual cash value of said property, and deny that all of the other property in Kootenai County, Idaho, or any property in said Kootenai County, save or except the property of said plaintiff was during the year 1911, assessed at

not to exceed from 30 to 60 per cent of its actual cash value. On the contrary, said defendants, and each of them, allege that all of the property in Kootenai County, State of Idaho, was assessed by said assessor for the year 1911, at the full cash value thereof.

XI.

Answering paragraph XV of plaintiff's bill of complaint, said defendants, and each of them, deny that the said assessor, in order to reach the actual and full cash value of the property of said plaintiff, did fraudulently or wrongfully or arbitrarily, or without investigation or attempt to secure information, assess the property of the said plaintiff hereinbefore described or any property of said plaintiff at more than twice its actual cash value or at more than its actual cash value, in any amount. Defendants admit that the said assessor extended the said amount at which said property was assessed, upon the said assessment-rolls of Kootenai County, as the full cash value of said property.

XII.

Answering paragraph XVI of plaintiff's bill of complaint said defendants, and each of them, deny that the said assessor wrongfully or unlawfully or for the purpose of compelling the said plaintiff to pay an unjust or unreasonable proportion of the taxes of the said Kootenai County, State of Idaho, wilfully or knowingly assessed the property of said plaintiff at more than twice its actual and full cash value, or for more than its full cash value in any amount; and deny that the said assessor wrongfully [53] or unlawfully intended or was intending at all

such times, or at any time to assess the property of said plaintiff at more than twice its actual cash value, or for more than its full cash value in any amount, or thereby compel said plaintiff to pay many times the amount of its just proportion of the taxes of said Kootenai County, Idaho.

Said defendants, and each of them, admit that after said taxes had been extended by the said assessor upon the tax rolls of Kootenai County, Idaho, the county auditor of the said County of Kootenai, delivered said assessment-rolls to the said tax collector of said county for the collection of said taxes.

XIII.

Answering paragraph XVII of plaintiff's bill of complaint, defendants, and each of them, deny that the said assessor discriminated against said plaintiff and in favor of all other owners of property or any owners of property in said County of Kootenai, or particularly against said plaintiff and in favor of other owners of property or any owners of property of similar character or class or of property used for manufacturing purposes or in favor of the other owners of machinery or any owners of machinery in Kootenai County, Idaho, or against this plaintiff; and deny that as a result of said assessment, said plaintiff is required to bear more than its just burden of taxes within said County of Kootenai or that the taxes assessed and levied against the other property within the said County of Kootenai of similar character or other property of any kind, are not uniform as required by the laws and constitution of the State of Idaho, or that the property of said plaintiff

was taxed at a greater rate proportionately than the property of the same class or any property in said county and State of other persons or any persons or corporations; and deny that in all instances or any instance property used for manufacturing purposes or property held or owned [54] by individuals or corporations, organized under the laws of the State of Idaho, or particularly by residents or citizens of Kootenai County of the same character or class, as the property of said plaintiff, were not assessed for more than 60 per cent of their full cash value, or that any property in said Kootenai County, Idaho, was not assessed for more than 60 per cent of its full cash value. Said defendants admit that none of the property in Kootenai County, State of Idaho, was assessed by said assessor for the year 1911, in excess of its full cash value. And deny that the property of said plaintiff as described in said plaintiff's bill of complaint was assessed at more than its actual cash value, or more than twice its actual cash value, or in any amount more than its full cash value thereof; and deny that the said assessment constituted an unlawful or wrongful discrimination against said plaintiff or in favor of other taxpayers in said Kootenai County.

XIV.

Answering paragraph XVIII of plaintiff's bill of complaint, said defendants, and each of them, deny that by reason of the assessment made by the assessor of Kootenai County, for the year 1911, on the property of the Washington Water Power Company, a fraud was committed against said company or the

property of the plaintiff overvalued as compared with other property in the County of Kootenai, of the same kind or character or as compared with all other property in the county of Kootenai, or that plaintiff has been discriminated against in said assessment, or that it is required thereby to pay more than its just proportion of the taxes of said county, or that a gross injustice or any injustice has been done plaintiff, or a gross discrimination or any discrimination in the assessment or taxation of the property of the plaintiff existed or does exist in Kootenai County. [55]

XV.

Answering paragraph XIX of plaintiff's bill of complaint, defendants, and each of them, deny that the assessor did wrongfully, arbitrarily or unjustly assess or pretend to assess or value the plaintiff's property through prejudice or bias, against the plaintiff or for the reason that it is a foreign corporation, or for the further reason that the plaintiff is now, or was during the year 1911, in litigation with various persons in the County of Kootenai, State of Idaho, many of whom had or claimed to have political power or influence. Defendants admit that the plaintiff was seeking to acquire and condemn and appropriate a considerable quantity of land in the said County of Kootenai, overflowed by its said dam, for power development; but defendants deny that bias or prejudice exists or existed during the year 1911, in said Kootenai County against the plaintiff, because of the pendency of said actions, wherein said plaintiff sought to acquire and condemn the said

lands and deny that the said assessor wrongfully or fraudulently or unlawfully assessed the property of the plaintiff for the year 1911.

XVI.

Answering paragraph XX of plaintiff's bill of complaint, defendants, and each of them, admit that at the regular meeting of the Board of Equalization of Kootenai County, Idaho, held in the month of July, 1911, the plaintiff appeared and made application to the County Board of Equalization for a reduction of the values placed upon its property herebefore referred to, including the railroad spur and bridge. That the plaintiff filed before the said Board of Equalization of the County of Kootenai, State of Idaho, a petition in writing, verified by the General Manager and Agent of the plaintiff. That a copy of said petition is attached to plaintiff's bill of complaint. [56]

That witnesses were called on behalf of the plaintiff and under oath testified before said Board and were examined by the said Board and its attorney, and at said meeting the said assessor was present and made his statement to said Board, under oath. Defendants deny that the plaintiff made a showing of facts or showed to the said Board that said valuation placed upon its said property by the said assessor were wrong or excessive or more than twice the actual cash value, and full cash value, or more than the actual or full cash value in any amount. Defendants admit that the said plaintiff appealed to the said Board of Equalization for a relief, and that said matter was taken under advisement, by said

Board and thereafter, on the 28th day of July, 1911, the said Board passed upon the application of the plaintiff, and ordered that the assessment on a certain building located on the Indian reservation be reduced from \$600 to \$25, and the assessment on a branch power line in Kootenai County be reduced from 25 to 23 miles. Defendants deny as to all the balance of plaintiff's application or petition the said Board of Equalization arbitrarily or in conflict with the facts before it, or unjustly or wrongfully or illegally declined or refused or neglected to give to plaintiff any relief whatever; admit that said Board ordered the said assessment made by the assessor to stand as the assessment upon the plaintiff's property.

Defendants deny that the said action of said Board of Equalization in sustaining the said valuation in the assessment of plaintiff's property constituted an unlawful or illegal or fraudulent discrimination against the plaintiff or in favor of all or any other owners of property in the County of Kootenai, State of Idaho, or constitute a discrimination as against the property of the plaintiff, or the assessed valuation thereof as compared to other property of like class or character, or [57] any other property in the County of Kootenai, State of Idaho, and deny that said assessment was an overvaluation of said property in any amount whatever.

XVII.

That for answer to paragraph XXI of plaintiff's bill of complaint, said defendants, and each of them, deny that at the said hearing said plaintiff requested

the said Board either by themselves or by some competent person selected by them for that purpose, at the expense of the plaintiff, to make a physical investigation or examination of the property of the said plaintiff for the purpose of determining its full or actual cash value, and deny that said plaintiff offered to submit to the said Board, or any person selected by it, its books, papers or records showing the actual cost or full cash value of all of said property or any part thereof; and deny that in addition thereto that said plaintiff offered to turn over to the said Board or its representatives for investigation or examination, all or any of its books or records for the purpose of showing the production of the said plant, its earnings or expenses in connection with the maintenance and operation thereof, for the purpose of ascertaining the full or actual cash value thereof, or for the purpose of assisting the said Board in arriving at a fair or just assessment of the said property, or a fair or just determination of its full cash value, and said defendants and each of them state that during the progress of said hearing before said Board of Equalization, one of the attorneys for said plaintiff, made a statement to said Board that the members of said Board would be privileged to investigate the records and books of said plaintiff company, provided they would go to Spokane, Washington to do so, all of said books and records being located at Spokane, Washington, and out of the jurisdiction of the said Board of Equalization; and said defendants and each of them deny that said plaintiff offered to submit to the said [58] Board

or any person selected by it, its books, papers or records showing the actual cost or the full cash value of all of said property to said Board of Equalization, at the place where said Board of Equalization was in session, or to the said Board within said County of Kootenai, State of Idaho.

And said defendants and each of them deny that the said Board declined, refused or neglected to accept the said offer to make an investigation or investigations of the property of said plaintiff company, and deny that said Board arbitrarily or without investigation or attempt to secure information or in direct conflict with the facts as shown by the testimony produced before the said Board, affirmed or confirmed the action of said defendant, Fred E. Wonnacott, and said defendants, and each of them, deny that the assessment of said defendant, Fred E. Wonnacott, of the property of said plaintiff company for the year 1911, was wrongful or fraudulent or illegal, or made in an arbitrary manner at a sum far in excess of its full and actual cash value, or in any sum in excess of its full or actual cash value; and said defendants, and each of them, deny that at said hearing before said Board there was no testimony or evidence supporting or justifying or showing or pretending to show the value of said property of the plaintiff to be as assessed, by the said assessor, and deny that the said assessor simply submitted without investigation or inspection or knowledge of the full or actual cash value of said property, a statement, and said defendants, and each of them, deny that the statement or testimony of said Fred E. Wonnacott,

assessor, shows the bias or prejudice or any bias or prejudice of the said assessor against said plaintiff, and said defendants and each of them deny that the said Board wilfully or wrongfully or arbitrarily or fraudulently, without further or other investigation, or without justification in the facts before it, denied relief to the said plaintiff or ordered the said assessment made by [59] said Fred E. Wonnacott, one of the said defendants, to stand. But said defendants and each of them allege and state the facts to be that the said Board of Equalization did grant some relief to the said plaintiff as prayed for in the petition filed and ordered the balance of said assessment made by said defendant, Fred E. Wonnacott to stand, but that said order was not made wrongfully or arbitrarily or fraudulently or without investigation or justification in the facts before it.

XVIII.

Answering paragraph XXII of said plaintiff's bill of complaint, said defendants, and each of them, deny that the said Board of Equalization was biased or prejudiced against said plaintiff. Said defendants, and each of them, admit that one member of the said Board of Equalization, to wit, John L. Ferguson, was in litigation with said plaintiff at the time he sat upon said Board, and during the entire year of 1911; but deny that the said Ferguson entertained bitter personal bias or prejudice or any personal bias or prejudice against said plaintiff. Said defendants admit that at the time said Ferguson sat and acted as a member of said Board, and during the year 1911, there was pending in the Circuit Court of the United

States, for the District of Idaho, Northern Division, an action brought on behalf of said plaintiff to acquire certain lowlands owned by said Ferguson, and admit that the said Ferguson appeared in litigation as a witness against said plaintiff, and admit that there was pending in the said Circuit Court of the United States for the District of Idaho, Northern Division, a suit by the said Ferguson against the said plaintiff for the damages in the sum of \$8,000, but said defendants, and each of them, deny that the said Ferguson demanded or asked of said plaintiff large or exorbitant sums in settlement of said litigation, or for the said lands which the plaintiff required in the performance of its public duty. Said [60] defendants and each of them, admit that the said Ferguson demanded of said plaintiff the sum of \$7,500 in settlement thereof, and that he, the said Ferguson, in his complaint asked for the sum of \$8,000, but said defendants and each of them deny that said sums were exorbitant or unreasonable, or that any sums which said Ferguson asked of said plaintiff were exorbitant or unreasonable, and said defendants, and each of them, admit that when the said cause was tried out, and determined before referees appointed by the Circuit Court of the United States for the District of Idaho, Northern Division, the said Ferguson was allowed the sum of \$1,779.25, with interest thereon as the full value of said lands so sought to be acquired by plaintiff, and the damage to the remaining part thereof, by reason of its severance, which said report of referees was filed December 11, 1911. Said defendants, and each of them, deny that said Fergu-

son, because he did not receive the amount which he asked of said plaintiff, or was not awarded the amount which he asked of said plaintiff, entertained hostile or bitter feelings against said plaintiff, or that said Ferguson entertained hostile or bitter feelings against said plaintiff, or that said Ferguson entertained hostile or bitter feelings against said plaintiff at any time or at all; and said defendants, and each of them, deny that the said Ferguson prior to running for the office of County Commissioner did in a large measure, or at all, bias his campaign upon the fact that he was opposed to said plaintiff, or hated said plaintiff.

XIX.

Answering paragraph XXIII of plaintiff's bill of complaint, said defendants, and each of them, deny that the application of said plaintiff as made to the said Board of Equalization, was of no avail or fruitless, and deny that the said Board declined or neglected or refused to render to said plaintiff the relief to which it was entitled; but said defendants and each of them allege and say that the said Board did grant to said plaintiff [61] such relief which said plaintiff was entitled to and no more, and said defendants, and each of them, deny that said plaintiff has exhausted the remedies provided by the Statute of the State of Idaho, to secure a just valuation or assessment upon its property, and in this regard said defendants, and each of them, further state and allege that if the said plaintiff has no remedy as provided by the Statute of the State of Idaho, at the present time, it has lost

such remedy by reason of its own negligence and laches, by not availing itself of the remedy provided by the Statute of the State of Idaho, at the time provided by the Statute of the State of Idaho.

XX.

Answering paragraph XXIV of plaintiff's bill of complaint, said defendants, and each of them, admit that thereafter, by an order of the State Board of Equalization, all real property in the County of Kootenai, State of Idaho, was reduced 15 per cent, including the property of said plaintiff, and that said reduction was made only on real property, but said defendants and each of them deny that an unjust or unreasonable or illegal or fraudulent discrimination existed or ever existed, as against said plaintiff by reason of said assessment made by said defendant Fred E. Wonnacott for the year 1911, or by reason of the action of the Board of Equalization of said Kootenai County, Idaho, of said assessment for the year 1911; and deny that there was any discrimination whatever, or at all, as against the property of said plaintiff or in favor of all other real property, or any other real property in the County of Kootenai, State of Idaho, which could be affected by the said order of the said Board of Equalization.

XXI.

That for answer to paragraph XXV of plaintiff's bill of complaint, said defendants, and each of them, deny that the methods which was adopted by the said Assessor in assessing said property [62] was an incorrect and improper method, in this, that the said lands herein described, together with the dam, build-

ings and machinery constitute together a power plant, or that the same and the whole thereof should be assessed as one item, namely, the said land, together with the dams, power plant, machinery, buildings and equipment, situated thereon.

Said defendants and each of them deny that the lands described as follows, to wit:

On page 11, Book 1, of deeds, situate in Sec. 3 and 4, Township 50, Range 5.

On pages 412 and 413, Book "U" of deeds, in Sec. 3, township 50, Range 5.

On 460 to 465, inclusive, Book 9 of deeds, in Sec. 3, Township 50, Range 5.

On page 97, Book 34 of Deeds Grist-mill in Sec. 3, Township 50, Range 5.

constitute one piece of property. Said defendants admit that said property above described is adjoining and contiguous, but denies that the same should be assessed as one piece of property, and deny that each piece of said property is necessary to the other in the improvement of said water power.

XXII.

Answering paragraph XXVI of plaintiff's bill of complaint, said defendants, and each of them, deny that said assessor adopted with reference to the assessment of the property of said plaintiff a different system from that of other manufacturing plants and property in the said county, in segregating said plaintiff's property which said property is contiguous and is a part of one manufacturing plant, and denies that with reference to all other manufacturing plants or property in said Kootenai County, except the prop-

erty of said plaintiff, the said assessor has not segregated the machinery or buildings, but has assessed the same, together as one piece of property, and said defendants and each of them deny that assessing said property together as one piece of [63] property is the only method by which the same can be fairly or reasonably assessed. Said defendants, and each of them, allege and state that the method used by said defendant, Fred E. Wonnacott, in assessing said property of said plaintiff for the year 1911 was a correct method of assessing said property and was a method by which the same could be and was fairly and reasonably assessed.

Said defendants, and each of them, deny that if the said property is to be segregated out in substantially the same manner as the same has been assessed by said defendant, Fred E. Wonnacott, that the said assessments should not exceed the following amounts:

Certain property situated near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds, and on pages 412 and 413 of Book U of Deeds, containing 270 acres more or less.

That certain property described at pages 460 to 465 inclusive of Book 9 of Deeds in Township 50, North of Range 5 W., B. M., in Section 13 thereof.

That certain land with a certain grist-mill situated in Section 3, township 50, North of Range 5 W., B. M., the prop-

erty being described on page 97, Book	
34 of Deeds.....	\$97,986.40
All dams and fixtures therein at Post	
Falls.....	331,626.00
All buildings connected with power plant	
and used in connection therewith and	
mentioned above....	100,205.00
All machinery in power-house and con-	
nected with power plant....	313,236.00
But said defendants, and each of them, allege and	
state that said property as segregated and assessed by	
the said assessor for the year 1911 should be in the	
amounts as the same were assessed by said defendant	
Fred E. Wonnacott, for the year 1911.	

XXIII.

Answering paragraph XXVII of plaintiff's complaint, said defendants, and each of them, deny that it is impossible for said plaintiff, or that it was impossible for the said Assessor to segregate the value of the various dams of said plaintiff. Said defendants and each of them further deny upon information and belief that in the construction of said dams and plant, the [64] cost of said dams was kept by the said plaintiff as one item, and deny that one dam of said plaintiff's said property is valueless or useless without the other dams; and said defendants, and each of them, deny that the full cash value of the following described property, to wit:

That certain property situate near Post Falls, Kootenai County, Idaho, particularly described on page 11 of Book 1 of Deeds and on pages 412 and 413, Book "U" of Deeds.

That certain property described on pages 460 to 465, Book 9 of Deeds, situated in Section 13, Township 50 N., R. 5 W., B. M.

That certain parcel of land with a grist-mill, situated in Section 3, Township 50 North, Range 5 W., B. M., the property being described on page 97, Book 34, of Deeds.

Bear trap dam and small dam at Post Falls, in Section 3, Township 50 N., R. 5 W., B. M.

Building and excavating in Section 4, Township 50 N., R. 5.

Machinery on Island No. 2 in Section 4, Township 50 N., R. 5 W., B. M.

Concrete foundation and dam in Section 4, Township 50 N., R. 5 W., B. M.

was not in excess of the sum of \$843,053.40 on the second Monday in January, 1911, or at any other time during the year 1911, and deny that if the value of the said property on the second Monday of January, 1911, or at any other time during the year 1911, had been based on its actual cost to the plaintiff, that the value thereof did not or would not exceed the sum of \$854,339.42; and deny that based upon its earning capacity the said property could not in any event be held to be any greater value than the sum of \$843,053.40; but said defendants, and each of them, allege and state that the actual and full cash value of said above described property belonging to said plaintiff, on the second Monday in January, 1911, was the sum of \$2,480,500.00.

XXIV.

Answering paragraph XXVIII of said plaintiff's

bill of complaint, defendants, and each of them, deny that an earning of ten per cent per annum upon its said investment on the above-described property is a reasonable return and no more, but said defendants, and each of them, allege and say that an earning of six per cent per annum upon the investment made by said plaintiff [65] in its said property is a reasonable return and no more, and said defendants, and each of them, deny that any assessment in excess of the sum of \$843,053.40 would be an unreasonable or unjust or excessive assessment; but said defendants, and each of them, allege and say that the full cash value of plaintiff's property as assessed is the sum of \$2,529,250.00; and deny on information and belief that an assessment in excess of the sum of \$843,053.40 would reduce the earnings from the said plant or the said property hereinbefore described below 10 per cent upon said property, and said defendants, and each of them, deny that if the full cash value of said property should be determined, based on the earning capacity, that the full cash value thereof on the second Monday in January, 1911, would not exceed the sum of \$843,053.40; and deny that if the actual cost thereof to the plaintiff is to be determined, the value of said property would not exceed the sum above given, to wit, \$854,339.42.

XXV.

Answering paragraph XXIX of plaintiff's bill of complaint, said defendants, and each of them, deny that the said business in which the plaintiff is engaged, of generating, distributing and selling electric power and energy, should return 10 per cent upon the

investment, or should return any amount in excess of 6 per cent upon the investment; and deny that the said business engaged in by said plaintiff is a hazardous investment, subject to many changes, as knowledge concerning electricity, or its generation or transmission is developing, or that such an investment is not a safe one, unless the investor is permitted to earn 10 per cent thereon, or that the demand for electricity fluctuates. Defendants and each of them admit that the plaintiff sells electricity to the mines in Shoshone County, Idaho; but denies that the demand for electricity from that source is not constant or that the same fluctuates or that the return upon the investment is [66] hazardous or depends upon the market for the products of said mines or the stability or permanency of said mines, or that a large part of plaintiff's investment depends or is dependent upon the production or stability of life of the mines of said Coeur d'Alene Mining District, or that by reason of all of said facts the said return of 10% is not excessive, or is a just or reasonable return or that said business is a hazardous business or the investment is a hazardous investment. And defendants, and each of them, allege that any return in excess of 6% on the investment is a reasonable and just return on the investment of plaintiff.

XXVI.

Answering paragraph XXX of plaintiff's bill of complaint, defendants, and each of them, admit that the railroad spur and bridge, assessed at \$48,740, was a spur and bridge across one of the channels of the Spokane River, but deny that it was a temporary

spur at the time of the construction of said power plant, or that the same has not since been used by the plaintiff, or that the bridge is not worth in excess of the sum of \$2,000, or that the same did not cost to exceed the sum of \$5,000, when used or has no practical use at this time or that it was put in for a temporary use, or that the rails used thereon were not the property of the plaintiff, or that the said rails did not on the second Monday of January, 1911, have a value in the excess of the sum of \$2,500, or that the said railroad spur had been abandoned prior to the second Monday in January, 1911, or that the Northern Pacific Railroad Company had been requested to remove the said rails, or that the property so assessed at the sum of \$48,740, had no value whatever, except the value of the rails or the small present value of the railroad bridge, or that said property was assessed at far in excess of its full cash value or [67] at any amount in excess of its full cash value; and defendants allege that in the statement furnished by the said Washington Water Power Company to the defendant Fred E. Wonnacott, as Assessor, and Tax Collector, of Kootenai County, the said plaintiff listed the said railroad spur and bridge as its property on the second Monday in January, 1911.

XXVII.

Answering paragraph XXXI of plaintiff's bill of complaint, defendants, and each of them, admit that in Kootenai County there are large areas of valuable farm lands valued at from \$200 to \$300 per acre and so valued and held by the owners thereof, having an actual cash value of from \$200 to \$300 per acre, and

a market value of from \$200 to \$300 per acre on the second Monday in January, 1911; but deny that the assessor wilfully or knowingly or designedly or in any manner *of* for any purpose, or at all, placed the same upon the assessment roll or listed the same at a valuation of from \$100 to \$125 per acre, or that thereby the said assessor intended to favor the owners of said irrigated lands or to discriminate against this plaintiff or establish in respect to the same, a different system of valuation than that which he used with reference to the property of the plaintiff, or that he assessed said farm lands at from 30 to 60 per cent of their actual cash value, or at any sum less than their full cash value, or in the case of the plaintiff's property, assessed the same at more than twice its actual cash value or at any amount more than its cash value. Deny that said assessor created a gross or unequal valuation of the property of the plaintiff, compared with the farming property situated in the said Kootenai County, or that he placed or intended to place or attempted to place an unequal burden upon the plaintiff; and defendants deny that any act of the assessor in assessing said property constituted a fraud upon the plaintiff or an attempt on the part of said assessor or said Board of Equalization to throw upon the [68] plaintiff a larger taxation than was just or equal.

XXVIII.

Answering paragraph XXXII of plaintiff's bill of complaint, defendants, and each of them, admit that the plaintiff is a public service corporation, but denies that the property of other public service cor-

porations in the County of Kootenai, State of Idaho, as assessed by the said assessor during the year 1911, did not exceed from 30 to 60 per cent of its actual cash value, and allege that all public service corporations were assessed at their full cash value; deny that all property of public service corporations in Kootenai County, Idaho, except the property of plaintiff, was during the year 1911, assessed at not to exceed 30 to 60 per cent of its actual cash value, or at any sum less than its full cash value; and deny that the property of the plaintiff was assessed at more than twice the full and actual cash value thereof, or that the same was assessed at any sum more than the full cash value thereof, or that plaintiff's property was assessed proportionately higher than other property of like kind or character, for the purpose or with the intention of discriminating against the plaintiff, and in favor of other public service corporations in Kootenai County, or at all, or for the purpose of compelling it to pay more than its share of taxes.

XXIX.

Answering paragraph XXXIII of plaintiff's bill of complaint, defendants deny that on the 26th day of December, 1911, or at any time during the year 1911, or at all, the plaintiff tendered to the tax collector of Kootenai County, Idaho, all taxes that were due or might be levied upon the property of plaintiff; admit that the said plaintiff tendered to the tax collector the sum of \$13,878.25, in payment of all of its taxes; but deny that the sum so tendered was all that could be legally levied upon said property. Ad-

mit that the assessor and *ex-officio* tax collector [69] refused to receive or receipt for said amount, and refused to accept the same, and credit the same upon the taxes assessed against the plaintiff for the County of Kootenai, State of Idaho, and that said assessor stated to the plaintiff that he would accept no sum whatever except the full amount of taxes assessed, levied and extended upon the tax-roll, but deny that said tax was unlawful or fraudulent or unjust.

XXX.

Answering paragraph XXXIV of plaintiff's bill of complaint, said defendants, and each of them, state that they have no information or belief as to whether or not the said plaintiff made the said tender upon the basis or the valuation for assessment purpose of \$854,339.42, and therefore said defendants deny the same. Said defendants deny that the said basis upon which said plaintiff tendered the said money was greater than the valuation for assessment of other property of like kind or character or value, within the County of Kootenai, State of Idaho, or was upon the full cash value thereof and deny that all other property in the County of Kootenai, State of Idaho was assessed at less than its full cash value, during the year 1911; but said defendants allege and say that all of the property in Kootenai County, State of Idaho, was assessed at its full cash value, and no more or less than its full cash value, for the year 1911; and defendants deny that said tender was made upon an eminently proper or just valuation or upon the full cash value of plaintiff's said property.

Defendants admit that at the time of the said tender to the said tax collector, plaintiff stated to said tax collector that it did not ask a receipt in full, but simply offered to pay the amount which it admitted was the levy upon its property at what the plaintiff claimed was its full cash value; and admit that the said tax collector stated to plaintiff that he would not receive or receipt for any sum as taxes on the said property of the said [70] plaintiff less than the total amount of taxes levied upon the same. Defendants deny that said plaintiff has tendered the amount legally due upon the said property to the said tax collector.

XXXI.

Answering paragraph XXXV of plaintiff's bill of complaint, said defendants, and each of them, deny that the taxes assessed and levied on the property of the Washington Water Power Company was a pretended tax or was wrongful in any manner, or at all, and allege the fact to be that the taxes on the following described property as set out in paragraph XXXV of plaintiff's complaint is a just and legal tax owing by the said Washington Water Power Company on the said property to said defendant, Kootenai County, to wit:

That property described on page
11, Book 1 of Deeds, in Sec. 3 and
4 Twp. 50 N. R., 5 W., and on
pages 412 and 413, Book "U"
of Deeds, in Sec. 4, Twp. 50 N.
R., 5 W.....\$14917.50

On property described in pages 460 to 465, inclusive, Book 9 of Deeds, in Sec. 3, Twp. 50 N. R., 5 W. B. M.....	1045.50
On property described on page 97, Book 34 of Deeds, Grist-mill, Sec. 3, Twp. 50 N. R., 5 W....	557.60
Bear trap dam and small dam at Post Falls, Sec. 3, Twp. 50 N., R. 5 W., B. M.....	7840.84
Building and excavating, Sec. 4, Twp. 50 N., R. 5 W.....	3013.85
Machinery on Island #2, sec. 4, Twp. 50 N., R. 5 W.....	5565.00
Concrete foundation and dam, Sec. 4, Twp. 50 N., R. 5 W....	2035.20
Railway spur and bridge.....	679.58

and that the total amount of said taxes so justly due and owing from said plaintiff to said defendant, Kootenai County, amounts to the sum of \$35,655.07, together with interest, and penalties, as provided by law; and said defendants deny that all or any of said taxes are levied or demanded without warrant of law, or in violation of the rights of the plaintiff.

XXXII.

Answering paragraph XXXVI of plaintiff's bill of complaint, defendants, and each of them, admit that the said assessor and *ex-officio* tax collector of Kootenai County, Idaho, after the said tender by the plaintiff, and the refusal to accept the same, marked the said taxes upon the property of this plaintiff hereinbefore [71] described, as delin-

quent, and thereafter, after the first Monday in January, 1912, claimed and demanded in addition to the amount of said taxes aforesaid a penalty upon each and every item of said tax 10% thereof; that the said defendant threatened that they will publish a notice in which they will offer for sale and will sell the said property belonging to the plaintiff for the amount of said taxes claimed to be due and delinquent thereon, and for the said penalties and for the costs of publication, and unless restrained and enjoined by the order of the Court, will so publish the notice and will offer the lands and property for sale, and will sell the same in the manner prescribed by law for the sale of lands for delinquent taxes, and that each and every part thereof will be separately offered for sale and be sold to the person who will take the least quantity of said property, and pay the said taxes, penalties and costs, claimed to be due, and the said tax collector will make and deliver to the purchaser of such property so sold, a certificate showing such sale, which certificate will entitle the said purchaser to a deed from the County, conveying said lands and said property so purchased, at the expiration of three years, if the same be not sooner redeemed.

XXXIII.

Answering paragraph XXXVII of plaintiff's bill of complaint, defendants admit that the taxes constitute and are and will be a lien upon the title to the said respective pieces of property against which the same are assessed and levied; that by the sale of said property by the tax collector the said County of Kootenai, and the said assessor and *ex-officio* tax col-

lector will transfer to different parties or corporations who purchase the said property at the sale, the land which it now claims upon the different parcels of property. Defendants deny that the plaintiff would be put to great or unnecessary costs; and deny [72] that said sale would constitute a cloud upon the title of plaintiff or work great or any wrong or injustice to the plaintiff. Admit that at the expiration of three years, if the property should not be redeemed from said sale, the purchaser thereof, at such sale, for delinquent taxes, would be entitled to receive a deed from the County of Kootenai conveying to the said purchaser the fee title to such property; but deny that such deeds would be invalid upon their face or would constitute or be a cloud upon the title to such respective pieces of property or would greatly impair or destroy their market value to the plaintiff.

XXXIV.

Answering paragraph XXXVIII of plaintiff's bill of complaint, defendants deny if said taxes levied should be paid by plaintiff, that plaintiff could not recover the portion thereof paid to the State of Idaho, if the same should be found to be unlawful, and deny that if plaintiff should pay the said tax, the plaintiff would in order to recover the same, if it should be held to be unlawful, be compelled to bring separate suits against Kootenai County or each of the said road districts of school districts or would thereby be compelled to bring a multiplicity of suits.

XXXV.

Defendants deny that the plaintiff has no plain or speedy or adequate remedy at law. These defendants, and each of them, assert and claim that under the Constitution and laws of the State of Idaho, the said plaintiff had a plain, speedy and adequate remedy at law, in that the said plaintiff could have applied to the Board of County Commissioners under Section 1791 of the Revised Codes of the State of Idaho.

XXXVI.

The defendants, and each of them, for further answer say that they deny each and every allegation contained in said bill of complaint except as herein expressly admitted, denied or [73] controverted.

For further answer to the bill of complaint, these defendants, and each of them, allege:

That the defendant, Fred E. Wonnacott, as assessor and tax collector of Kootenai County, for the year 1911, demanded of the plaintiff, the Washington Water Power Company, a statement of its property, subject to taxation in Kootenai County, in accordance with law.

That the said plaintiff failed, neglected and refused to furnish to said assessor said statement, and neglected, failed and refused to furnish said assessor with any sworn statement listing its taxable property in Kootenai County, but that said plaintiff did furnish to said assessor a list of property as follows, to wit:

Kootenai County, Idaho.

Property situated at Post Falls, Idaho, and Owned by the Washington Water Power Co.

On page 11, Book 1 of Deeds, situated in Sections 3 and 4, Township 50 North, Range 5 West.

On pages 412-413, Book U of Deeds, Section 3, Township 50 North, Range 5 West.

Lots 1, 2, 3, 4, in Section 8, Township 50 North, Range 4 West.

Lots 1, 2, 3, 4, in Sections 9, Township 50 North, Range 4, West on pages 460, 461, 462, 463, 464, 465 of Book 9 of Deeds.

On page 97, Book 34 of Deeds, in Section 3, Township 50 North of Range 5 W., B. M. (Grist-mill.)

On page 191, Book 10 of Deeds (right of way containing 31 acres) 120 acres of right of way.

80 miles of poleline.

Building on Reservation.

Dams at Post Falls.

Buildings at Post Falls.

Machinery at Post Falls.

Railway spur and bridge.

That said list was not a true and correct list of the taxable property of said Washington Water Power Company; that they failed, neglected, to list a poleline known as the Pend d'Oreille pole line, about 23 miles long, also certain buildings built of [74] sheet iron, located near Cataldo, and the machinery contained in said building.

That as soon as practicable the said assessor of Kootenai County assessed the property according to

the description contained in the list furnished by the plaintiff to said Assessor, and that all of the said property of the said Washington Water Power Company was assessed at its full cash value, as follows, to wit:

On page 11, Book 1 of Deeds, situate in Sec. 3, and 4, Twp. 50, Range 5; and on pages 412 and 413, Book U of Deeds, in Sec. 4, Twp. 50 R. 5.....	\$1080000
On pages 460, 461, 462, 463, 464, and 465, Book 9 of Deeds, in Sec. 3, Twp. 50, Range 5.....	75000
On page 97, Book 34 of Deeds, Grist-mill, in Sec. 3, Twp. 50, Range 5.....	40000
Bear trap dam and small dam at Post Falls	562500
Building and excavation, Sec. 4, Twp. 50, R. 5.....	223000
Machinery on Island #2, Sec. 4, Twp. 50, Range 5.....	350000
Concrete foundation and dam, Sec. 4, Twp. 50, R. 5.....	150000
Railway spur and bridge.....	48750

That prior to the time said defendant Fred E. Wannacott made said assessment on said above-described property, he used due care and diligence in ascertaining the full cash value of said property.

That prior to the time of making the assessment for the year 1911, on the property of said plaintiff, the defendant, assessor, requested the plaintiff to al-

low him to make a physical examination of the property and machinery in the powerhouse of said company, located at Post Falls, Idaho, and that said company, its officers and agents in charge of said property, refused to allow the said assessor to inspect or examine said property, and refused the said assessor admission to its power-house, and did not allow them to inspect the machinery and electrical apparatus contained in said power-house.

And these defendants humbly submit to the Judge of this Honorable Court, and humbly insist that this suit is altogether unnecessary and vexatious, and that even if the complainant is [75] entitled to any relief by reason of the matters and things complained of by its said bill, the same might have been obtained by the proper procedure at law, as hereinbefore set up.

WHEREFORE, these defendants, and each of them, pray that the injunction prayed for by the plaintiff be denied; that the complainant's bill of complaint be dismissed, and the defendants herein, and each of them, may have decreed to them their costs in this behalf most wrongfully sustained.

DAVIS MEYERS,

Chairman of the Board of County Commissioners.

FRED E. WONNACOTT,

County Assessor and *Ex-officio* Tax Collector,

Defendants.

N. D. WERNETTE,

ROBERT H. ELDER,

Residence and P. O. Address: Coeur d'Alene, Idaho,

Solicitors for the Defendants

Due and legal service of the within Answer by receipt of a full, true and correct copy thereof, is hereby accepted at Coeur d'Alene, Idaho, this 22d day of June, A. D. 1912.

JOHN P. GRAY,
Attorney for Plaintiff.

[Endorsed]: Filed June 24, 1912. A. L. Richardson, Clerk. [76]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COMPANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
Ex-officio Tax Collector of Kootenai County,
Idaho,

Defendants.

Replication.

The replication of the *defendant* above named to the answer of the defendants above named.

This replicant, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto, saith, that it doth and will aver, maintain, and prove its said bill

to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law, to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays as in and by said bill it hath already prayed.

JOHN P. GRAY,
Attorney for Plaintiff,

Residence and Postoffice address of John P. Gray:
Coeur d'Alene, Idaho.

Service of the within Replication accepted and a true copy thereof [77] received at Coeur d'Alene, Idaho, this 27th day of June, 1912.

ROBERT H. ELDER,
N. D. WERNETTE,
Attorneys for Defendants.

[Endorsed]: Filed June 29, 1912. A. L. Richardson, Clerk. [78]

Defendants' Exhibit No. 3 [Testimony of C. S. McCalla].

C. S. McCALLA, recalled and cross-examined by KEARNS.

Q. Have you increased the amount of power generated at Spokane?

Objected to, etc.

(GRAY.) I will withdraw the objection.

(COURT.) Very well.

A. The company is preparing plans now for the development of the upper falls in Spokane. It will require about three years to make the development. The gain through the lake storage and this plant about 12,100 horse-power.

Q. What horse-power did you have before that?

A. With the total fall developed without the lake storage we will have 21,300 horse-power.

Q. That is with the gain?

A. No, this is without the lake storage, 21,300.

(COURT.) Is that the present capacity at Spokane?

A. No, sir, that is with the upper fall developed. With the storage we will get 33,400 horse-power, giving a gain of 12,100. The cost of development would be very nearly the same. There would be a slight difference, a little bit on the machinery. The actual machinery in the plant is relatively small part of the total cost of development.

(CERNS.) In other words, by holding the water of Lake Coeur d'Alene and the reservoir basin you increase the power of your Spokane plant from 21,300 to 33,400 horse-power?

A. That is it exactly. We contemplate to put in there four 7500 killawat generators, 30,000 killawat or a total of 40,000 electrical horse-power.

Q. Is it not a fact that the Washington Water Power Co. dam has another dam for the generation of power in Spokane, below the Spokane dam? [79]

A. This one in process of construction, yes.

Q. How long has that been in process of construction? A. Nearly two years.

Q. How near is it to completion?

A. We hope to have part of it—the first part of it running in the neighborhood of next October or November somewhere along there.

Q. That new dam can be added to as the demand for electric power continues to grow?

A. Unfortunately the entire dam has got to be put in the first time; in other words the entire investment has got to be made as far as dams and buildings go.

Q. You can add to your units in that dam the same as you add to them at Post Falls?

A. Yes, the buildings will hold the units. The Lake flowage there will give us a gain of about 5,400 horse-power.

Q. Without the lake storage how much power could you generate in that new dam?

A. Without lake storage we can generate in the neighborhood of 13,600.

Q. With the lake storage how much?

A. About 19,000. This same storage affects the city of Spokane; it has a pumping plant for water supply, also affects any power site on the river.

Q. Affects it, it is a benefit?

A. It benefits it, yes, benefits the city about 67 per cent.

Filed August 20, 1912. A. L. Richardson, Clerk.
[80]

Defendants' Exhibit No. 4 [Testimony of C. S. McCalla].

C. S. McCALLA, same recall.

Q. Where are you building this plant you say you have in process of construction?

A. That is at a place known as Little Falls about fifteen miles north of Reardon.

Q. How far from Spokane?

A. By the transmission line about 28½ miles.

Q. You say you have about how much capacity there?

A. We will have part of that plant in operation next fall or early winter if we have good luck.

Q. How much capacity?

A. We are putting in at this time—we expect to get the first unit of 5,000 kilowatts in operation.

Q. What was the low water capacity of the plant when completed?

A. The low water capacity with storage 19,000 horse-power.

(COURT.) I have *note* here that indicates you stated that the increase of power down there would be about 6,000 horse-power by reason of the reservoir. A. 5,400 with the complete installation.

Q. Get about 5,400 by the addition of the reservoir? A. Yes.

Filed August 20, 1912. A. L. Richardson, Clerk.
[81]

**Defendants' Exhibit No. 5 [Extracts from]
Testimony of C. S. McCalla.**

C. S. McCALLA—extracts from his testimony.

(GRAY.) What is the elevation of the water in the slack-water portion of the Coeur d'Alene River, the portion that is affected?

A. The same elevation as the water at the dam; slack water; no appreciable velocity.

Q. How do you know that is a fact?

A. You can tell by looking at it. There is absolutely no current there; logs will float with the breeze.

Q. A physical fact?

A. A physical fact, yes, could not be otherwise.

Q. What season of the year is it that the water is low naturally in Coeur d'Alene Lake and Spokane River?

A. Low-water season extends from July—the middle of July to—depending on the season—October up to February; the low-water season, it is lowest in September and October as a rule.

Q. How much power with the present dam you have constructed at Post Falls that you are now maintaining, do you develop, with the storage reservoir which you have—which you are using, by the maintenance of the present dam?

A. With six and a half feet of storage which the design of the bear-trap will permit storing in the lake, we can develop at Post Falls about 11,900 horse-power

Q. 11,900? A. 11,900.

Q. During high water?

A. We have installed about 15,000 horse-power.

Q. More than water enough to supply it during that period of time? A. Yes. [82]

Q. Without that storage, what horse-power—average horse-power, at low water, could you develop—at average low water, I mean during those low-water months?

A. Our low-water flow at Post Falls would permit us to develop about 5,650 horse-power.

Q. You say that would permit you to develop that? A. Without any storage, yes.

Q. That is a gain of how much?

A. A gain of about 90 per cent, the difference between 5650 and 11,900.

Q. That would be over one hundred per cent, would it not?

A. No, sir, 11,900 is about 90 per cent more than 5650, I think. (Figures.) Yes, I am in error; the low-water flow is—low water 6250 horse-power. With storage, six and a half feet, we get 11,900, a gain of 5650 horse-power, about 90 per cent.

Filed August 20, 1912. A. L. Richardson, Clerk.
[83]

Plaintiff's Exhibit No. 10 [Agreement, Dated January 14, 1905, Washington Water Power Company and Alice L. Martin].

THIS AGREEMENT, Made and entered into this 14th day of January, 1905, by and between The Washington Water Power Company, a corporation organized and incorporated under the laws of the State of Washington, party of the first part, and

Alice L. Martin, of Post Falls, Idaho, party of the second part, WITNESSETH: That,

WHEREAS the party of the first part has purchased of and from the party of the second part certain property in the vicinity of the town of Post Falls, in Kootenai County, State of Idaho, including riparian rights and water rights and the right to use water from the Spokane River for power purposes, and which has been, by deed dated December 17, 1904, transferred, conveyed and sold to and vested in the party of the first part by the party of the second part, and for which property and rights the first party has paid the second party a considerable sum of money in cash as part of the consideration for the said property so sold and conveyed:—

NOW, THEREFORE, In consideration of one dollar, in hand paid by the second party to the party of the first part, receipt of which is hereby acknowledged, it is hereby agreed as follows:

I.

That the party of the first part shall and will keep available from and by its electric plant in the vicinity of Post Falls, Idaho, for the use of the party of the second part, at that certain point in the vicinity of said town of Post Falls, which said point is more specifically described as follows, to wit: A point on the east and west center line of section three (3), in township fifty (50) north, range five (5) west, Boise meridian, in Kootenai County, State of Idaho, eight hundred (800) feet west of the center of said section three (3), electric energy (as measured by standard measuring instruments as hereinafter provided) to

the maximum amount of [84] ninety-five (95) horse-power (70 and $14/15$ Kilowatts) and also at the pumping station of the party of *the party* of the second part as now fixed on the north bank of the Spokane River near said town of Post Falls, in Kootenai County, State of Idaho, which said pumping station is situated at or about the point where the north bank of the channel of the Spokane River intersects Henry Street extended (which said Henry Street is one of the streets of said town of Post Falls), electric energy (as measured by standard measuring instruments as hereinafter provided) to the maximum amount of thirty (30) horse-power ($22\frac{2}{5}$ kilowatts), continuously from and after the first day of April, 1905 (unless said service shall be interrupted as hereinafter provided). Said service shall be of twenty-four hours per day of each and every day of each and every year, (and this contract shall be without limit as to time or duration), subject to the limitations contained in the terms and provisions hereinafter set forth.

II.

The electric energy to be so kept available by the first party to and for the second party shall be what is known as continuous twenty-four hour power, and the party of the first part shall and will cause to be provided as nearly as is reasonably practicable a continuity of supply of electric energy to the party of the second part, and shall and will as far as reasonably practicable preserve such continuity of supply, except in cases not avoidable by reasonable diligence, rendering necessary or proper the shut-

ting down of the electric service so to be provided; and the party of the first part may, without subjecting itself to any claim for damages, after three days written notice to the second party, make or cause such interruption in the supply of said electric energy as may be reasonably necessary for the proper completion, repair or maintenance of the plant or lines of the first party from its electric plant in the vicinity of Post Falls, Idaho. It shall not be necessary to give [85] any such notice when the interruption of current or energy so to be furnished shall occur notwithstanding such reasonable diligence on the part of the party of the first part.

The party of the first part shall not be required to furnish, nor shall it be liable for any failure to furnish, uninterrupted current, nor shall it be required to keep, or be liable for any failure to keep, available said electrical energy if such interruption or failure shall be caused wholly or partially, directly or indirectly, by the act of God, the public enemy, any riot or riots, strike or strikes, boycott or boycotts, labor trouble or labor troubles; or any suit, action, injunction, or any order of judgment or any court; or by any act or law of the State of Idaho, or of the State of Washington, or of the United States, or any officer or agent acting for or on behalf of either of said states or of the United States; or if the property of the party of the first part which it now owns or shall hereafter acquire in or bordering upon the Spokane River, in Kootenai County, State of Idaho, shall be taken or injured for public use or under the power of eminent domain; or if,

without negligence on the part of the party of the first part, the water power which the party of the first part now has or may hereafter acquire in the vicinity of Post Falls, Idaho, shall be destroyed, injured or in such condition that the first party shall be unable to generate electric energy with said water power to the extent of ninety-three and one-third ($93\frac{1}{3}\%$) kilowatts.

In the event that the property purchased by the first party from the second party and described by said deed hereinbefore mentioned, dated December 17th, 1904, made and executed by the party of the second part and A. M. Martin, her husband, as grantors to the party of the first part herein as grantee therein, which said deed was filed for record in the office of the county recorder of Kootenai County, State of Idaho, on the 24th day of December, 1904, and is recorded on page 464-465 of Book 9 of records of deeds in said office, shall be damaged, taken or appropriated [86] under the power of eminent domain or for public use as and in the manner provided by law, the first party shall, if possible, procure a separate judgment, decree, assessment and segregated amount of the damage done to the said property and the water power and water rights so purchased by the said first party from the second party and described in said deed, so as to place the second party, as nearly as may be in a position to secure the same compensation, damages and remuneration as if the said property, including water rights, and power, were at the date of such taking or damage vested in the second party, and if

such segregated and separate amount cannot be so had and procured, and the parties hereto shall be unable to agree thereon, the same shall be fixed by three arbitrators, one of which shall be selected by the first party, and one of whom shall be selected by the second party, and the two arbitrators so selected shall select a third arbitrator. Said arbitrators shall be distinterested. The decision, in writing, of any two of said arbitrators shall be final and binding upon each of the parties. Their decision shall be in writing and shall be after there shall be an opportunity for each and all the arbitrators to meet together, and the decision or conclusion reached shall be announced at such meeting after the aforesaid opportunity, but need not then be reduced to writing. The amount so fixed shall be paid from the fund received for and on account of such taking and damage assessed and paid to the second party when such proceeding or action shall be and become final. It is agreed, however, that the property described in said deed is also described in deeds from the Idaho Lumber and Manufacturing Company to the party of the first part herein, and the matter of damages and compensation covered by this paragraph shall be divided between the party of the second part to this contract and the said Idaho Lumber and Manufacturing Company as their interests were at the time of making said deeds and conveyances.

III.

The party of the first part shall and will provide, at its own [87] cost and expense, at or near the points where the said electric energy is so agreed

to be kept available by the first party for the use of the second party as aforesaid, in places to be provided by the party of the second part, such standard measuring instruments as may be proper, necessary or desirable to measure the electric energy agreed to be kept available by the first party, and at which places and by standard measuring instruments said electric energy so to be furnished shall be measured.

IV.

The said electric energy so to be kept available as above specified shall be what is known as alternating three-phase of about sixty cycles per second, and having a pressure of approximately two thousand two hundred volts.

The party of the first part shall, however, have the right to change the form of electric energy to be kept available as aforesaid, provided that in making such change the amount of energy to be delivered and measured at the place and in the manner hereinbefore specified shall in no wise be diminished, and provided further that the cost of making such change or changes shall be borne by the party of the first part.

V.

Representatives of both parties hereto shall have access to all apparatus and transmission lines on the premises of the party of the second part at any and all times, and shall have the right to have any and all measuring instruments tested, retested and recalibrated at any time for the purpose of ascertain-

ing the condition or accuracy of such instrument or instruments.

VI.

The party of the first part shall also have the right to enter upon the premises of the party of the second part for the purpose of constructing, repairing, and maintaining the electrical transmission [88] lines used for the purpose of supplying the electric energy herein agreed to be kept available by the party of the first part for the party of the second part, and the second party grants and gives to the first party the right to construct, maintain and operate transmission line or lines upon and over any part of the premises and property of the second party to reach the places described in paragraph numbered one (1) hereof as the points where said energy shall be kept available, together with the right to erect and construct and maintain any and all poles, arms, cross arms, wires, and any other matter or thing that may be necessary or proper, including a telephone wire, if desired by the first party, which telephone wire shall be extended from the electric plant of the first party to the place of business or office of the second party in the vicinity of the place where said energy is to be kept available as described in paragraph numbered one (1) hereof. And in the event that it shall be or become necessary, in order to make or keep available the said electric energy at said points described in paragraph numbered one (1) hereof, that transmission line or lines and telephone line, or either of them, be erected, constructed or maintained upon

or across any premises or property other than the premises and property of the parties hereto, or the premises and property of one of them, the second party shall, at her own cost and expense, and without cost or expense to the first party, procure and obtain the necessary right of way upon and over such premises and property upon, over and along which to erect, construct, maintain and operate such transmission line or lines and telephone line.

VII.

This contract expresses and contains the entire contract on the subject matter hereof. This contract shall not be modified or varied except by written contract. If at any time the terms hereof are not strictly adhered to or enforced, they shall not thereby be deemed waived or modified but shall as to all subsequent times and [89] dates be deemed in full force and effect unless modified in writing.

VIII.

The provisions of this contract shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, representatives, successors and assigns, including vendees, purchasers, lessees, renters, mortgagees; and any and all other persons, whether claiming by act of party or by operation of law or otherwise.

IN WITNESS WHEREOF, The said party of the first part has caused its name to be subscribed to these presents by its president and secretary and its corporate seal to be hereunto affixed pursuant to resolution of its board of trustees, and the said

party of the second part has hereunto set her hand, in duplicate, the day and year first above written.

THE WASHINGTON WATER POWER
COMPANY.

By D. L. HUNTINGTON,
As 2nd Vice-President.

[Seal]

Attest: H. L. BLEECKER,
As Secretary.

ALICE L. MARTIN. [Seal] [90]

State of Washington,
County of Spokane,—ss.

On this 2nd day of February, A. D. 1905, before me personally appeared D. L. Huntington and H. L. Bleecker to me known to be the 2nd Vice President and Secretary, respectively of

THE WASHINGTON WATER POWER COM-
PANY

the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they and each of them, were authorized to execute said instrument, and that the seal affixed is the seal of said corporation, and was so affixed to said instrument by the authority in them vested by the Board of Trustees of said corporation, and that they signed the said instrument by like authority.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed my official seal the day and year first above written.

[Seal]

W. J. McKEAN,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington. [91]

State of Washington,
County of Spokane,—ss.

I HEREBY CERTIFY THAT on this 14th day of January, 1905, before me, E. T. White, a notary public in and for the state of Washington, residing at Spokane, Washington, personally appeared Alice L. Martin, known to me to be the person whose name is subscribed to the within and foregoing instrument and who is described in and who executed said instrument, the wife of A. M. Martin, and described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of said instrument, and thereupon she acknowledged to me that she executed the said instrument, and that she signed and sealed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned, and that she does not wish to retract such execution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 14th day of January, 1905.

[Seal]

E. T. WHITE,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Filed August 20, 1912. A. L. Richardson, Clerk.

**Plaintiff's Exhibit No. 11 [Agreement, Dated
December 17, 1904, Alice L. Martin et al. and
Washington Water Power Co.].**

THIS INDENTURE, Made this 17th day of December, A. D. 1904, between ALICE L. MARTIN and A. M. MARTIN, her husband, of Post Falls, Idaho, the parties of the first part, and THE WASHINGTON WATER POWER COMPANY, a corporation organized and incorporated under the laws of the State of Washington, party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Five (\$5.00) dollars, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, sell, convey, remise, release and forever quit claim unto the said party of the second part, and to its successors and assigns, all that certain tract, piece and parcel of land situated in the county of Kootenai, State of Idaho, which is shown by the blue print or map attached hereto, marked Exhibit "B" and made a part hereof, the said premises being the premises shown and represented on said blue print or map as enclosed by a red line, and which said premises are bounded and particularly described as follows, to-wit:

STARTING POINT.

Commencing at a starting point described as follows: Fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections three (3) and

four (4), in township fifty (50) north, range five (5) west, B. M., running thence east one thousand three hundred eighty-three (1383) feet to a point on the center line of Sixth street of the town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four-tenths (1124.4) feet to the true place of beginning, which is marked "A" on said blue print.

PROPERTY CONVEYED.

running thence west from said true place of beginning two hundred ninety-three (293) feet to the east bank of the north channel of the [93] Spokane River; thence south ten degrees (10 deg.) east one hundred (100) feet; thence south nineteen degrees (19 deg.) east two hundred ten (210) feet; thence south thirty-three degrees (33 deg.) east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west line of a canal or sluice; thence northerly along west bank of said canal of sluice to a point; thence west sixty-four (64) feet to the true place of beginning.

Also commencing at the said point on the east bank on the north channel of the Spokane River two hundred ninety-three (293) feet west of the point above-described as the true place of beginning; thence south ten degrees (10 deg.) east one hundred (100) feet; thence south nineteen degrees (19 deg.) east two hundred ten (210) feet; thence south thirty-three degrees (33 deg.) east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west bank of a canal or

sluice; thence southerly along the west bank of said canal or sluice to a point at low water mark on the east bank of the north channel of said Spokane River; thence westerly around the point of land, and thence northerly along the low water mark along the east bank of the north channel of said Spokane River to the said point on the east bank of the north channel of said river two hundred ninety-three (293) feet west of said point above-described as the true place of beginning.

The parties of the first part also grant, bargain, sell, assign, transfer, convey, set over and deliver to the second party the following described rights and property, to wit:

All the rights, property, water, water power and right to use water granted or conveyed by Frederick Post and Margaret Post, his wife, by deed dated November 25th, 1899, and filed for record and recorded in the recorder's office of Kootenai County, Idaho, at page 423 of Book S of Deeds, to Alice L. Martin, one of the grantors herein. It is intended that this shall be construed to be a deed, transfer and conveyance to and vesting in the grantee herein, all [94] rights acquired, granted, given, conveyed, transferred to or vested in the grantors herein, or either of them, by said deed to said Alice L. Martin,—save and except the rights reserved in and by plat of dedication to and of the townsite of Post Falls, Idaho, to lay and maintain water mains and to erect and maintain poles and wires for light and power in and on the streets and alleys of said town.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises and property, together with the appurtenances, unto the said party of the second part, and to its successors and assigns, forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals, the day and year first above written.

ALICE L. MARTIN. [Seal]

A. M. MARTIN. [Seal]

Signed, sealed and delivered in presence of:

H. M. STEPHENS. [95]

State of Washington,
County of Spokane,—ss.

On this 17th day of December, A. D. 1904, before me, H. M. Stephens a notary public in and for the State of Washington, personally appeared Alice L. Martin, and A. M. Martin, her husband, who are personally known to me to be the persons described in and who executed and whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same and signed and sealed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

And the said Alice L. Martin, wife of the said A. M. Martin, upon an examination without the hearing

of her said husband, was by me made acquainted with the contents of the within and foregoing instrument, and thereupon she acknowledged to me that she executed the same freely and voluntarily, without any fear or undue influence of her said husband, and that she does not wish to retract such execution.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

H. M. STEPHENS,

Notary Public in and for the State of Washington,
Residing at Spokane, Wash.

Filed for record Dec. 24, 1904, at 9:15 A. M.
Recorded in Book "9" of Deeds, at pages 464 and 465.

Filed August 20, 1912. A. L. Richardson, Clerk.
[96]

Plaintiff's Exhibit No. 12 [Agreement, Dated January 14, 1905, Washington Water Power Co. and Idaho Lumber & Manufacturing Co.].

THIS AGREEMENT, Made and entered into this 14th day of January, 1905, by and between The Washington Water Power Company, a corporation organized and incorporated under the laws of the State of Washington, party of the first part, and the Idaho Lumber and Manufacturing Company, a corporation organized and incorporated under the laws of the State of Idaho, party of the second part, WITNESSETH: That,

WHEREAS, the party of the first part has purchased of and from the party of the second part cer-

tain property in the vicinity of the town of Post Falls, in Kootenai County, State of Idaho, including riparian rights and water rights and the right to use water from the Spokane River for power purposes, and which has been, by deeds dated December 17th, 1904, transferred, conveyed and sold to and vested in the party of the first part by the party of the second part, and for which property and rights the first party has paid the second party a considerable sum of money in cash as part of the consideration for the said property so sold and conveyed:—

NOW, THEREFORE, In consideration of one dollar, in hand paid by the second party to the party of the first part, receipt of which is hereby acknowledged, it is hereby agreed as follows:

I.

That the party of the first part shall and will keep available from and by its electric plant in the vicinity of Post Falls, Idaho, for the use of the party of the second part, at that certain point in the vicinity of said town of Post Falls, which said point is more specifically described as follows, to wit: A point on the east and west center line of section three (3), in township fifty (50) north, range five (5) west, Boise Meridian, in Kootenai County, State of Idaho, eight hundred (800) feet west of the center of said section [97] three (3),—electric energy (as measured by standard measuring instruments as hereinafter provided), to the maximum amount of two hundred and fifty (250) horse-power (186 and $\frac{2}{3}$ kilowatts) continuously from and after the first day of April, 1905, (unless said service shall be interrupted as herein-

after provided). Said service shall be of twenty-four hours per day of each and every day of each and every year (and this contract shall be without limit as to time and duration), subject to the limitations contained in the terms and provisions hereinafter set forth.

II.

The electric energy to be so kept available by the first party to and for the second party shall be what is known as continuous twenty-four hour power, and the party of the first part shall and will cause to be provided as nearly as is reasonably practicable, a continuity of supply of electric energy to the party of the second part, and shall and will, as far as reasonably practicable preserve such continuity of supply, except in cases not avoidable by reasonable diligence, rendering necessary or proper the shutting down of the electric service so to be provided; and the party of the first part may, without subjecting itself to any claim for damages, after three days written notice to the second party, make or cause such interruption in the supply of said electric energy as may be reasonably necessary for the proper completion, repair or maintenance of the plant or lines of the first party from its electric plant in the vicinity of Post Falls, Idaho. It shall not be necessary to give any such notice when the interruption of current or energy so to be furnished shall occur notwithstanding such reasonable diligence on the part of the party of the first part.

The party of the first part shall not be required to furnish, nor shall it be liable for any failure to fur-

nish, uninterrupted current, nor shall it be required to keep, or be liable for any failure to keep, available said electrical energy if such interruption [98] or failure shall be caused wholly or partially, directly or indirectly, by the act of God, the public enemy, any riot or riots, strike or strikes, boycott or boycotts, labor trouble or labor troubles, or any suit, action, injunction, or any order or judgment of any court, or by any act or law of the State of Idaho, or of the State of Washington, of the United States, or any officer or agent acting for *or behalf* of either of said States or of the United States; or in the property of the party of the first part which it now owns or shall hereafter acquire in or bordering upon the Spokane River, in Kootenai County, State of Idaho, shall be taken or injured for public use or under the power of eminent domain, or in, without negligence on the part of the party of the first part, the water power which the party of the first part now has or may hereafter acquire in the vicinity of Post Falls, Idaho, shall be destroyed, injured or in such condition that the first party shall be unable to generate electric energy with said water power to the extent of one hundred eighty-six and two-thirds ($186\frac{2}{3}$) kilowatts.

In the event that the property purchased by the first party from the second party and described by said deeds hereinbefore mentioned, dated December 17th, 1904, made and executed by the party of the second part herein as grantor to the party of the first part herein as grantee, which said deeds and each of them were filed for record in the office of the county recorder of Kootenai County, State of Idaho,

on the 24th day of December, 1904, and are respectively recorded in said office on page 460—461 of Book 9 of records of deeds, and pages 462—463 of Book 9 of records of deeds, shall be damaged, taken or appropriated under the power of eminent domain or for public use as and in the manner provided by law, the first party shall, if possible, procure a separate judgment, decree, assessment and segregated amount of the damage done to the said property and the water power and water rights so purchased by the first party from the second party and described [99] in said deeds, so as to place the second party, as nearly as may be, in a position to secure the same compensation, damages and remuneration as if the said property, including water rights and power, were at the date of such taking or damage vested in the second party, and if such segregated and separate amount cannot be so had and procured, and the parties hereto shall be unable to agree thereon, the same shall be fixed by three arbitrators, one of whom shall be selected by the first party, and one of whom shall be selected by the second party, and the two arbitrators so selected shall select a third arbitrator. Said arbitrators shall be disinterested. The decision, in writing, of any two of said arbitrators shall be final and binding upon each of the parties. Their decision shall be in writing and shall be after there shall be an opportunity for each and all the arbitrators to meet together, and the decision or conclusion reached shall be announced at such meeting after the aforesaid opportunity, but need not then be reduced to writing. The amount so fixed shall be paid from

the fund received for and on account of such taking and damage assessed and paid to the second party in the proceeding or action to condemn and appropriate said property when such proceeding or action shall be and become final. It is agreed, however, that the property described in said deeds is also described in a deed from Alice L. Martin to the party of the first part herein, and the matter of damages and compensation covered by this paragraph shall be divided between the party of the second part to this contract and the said Alice L. Martin as their interests were at the time of the making of said deeds and conveyances.

III.

The party of the first part shall and will provide, at its own cost and expense, at or near the point where the said electric energy is so agreed to be kept available by the first party for the use of the second party as aforesaid, in places to be provided by the party of the second part, such standard measuring instruments as [100] may be proper, necessary or desirable to measure the electrical energy agreed to be kept available by the first party, and at which place and by said standard measuring instruments said electric energy so as to be furnished shall be measured.

IV.

The said electric energy so to be kept available as above specified shall be what is known as alternating three-phase of about sixty cycles per second, and having a pressure of approximately two thousand two hundred volts.

The party of the first part shall, however, have the right to change the form of electric energy to be kept available as aforesaid, provided that in making such change the amount of energy to be delivered and measured at the place and in the manner hereinbefore specified shall in no wise be diminished, and provided further that the cost of making such change or changes shall be borne by the party of the first part.

V.

Representatives of both parties hereto shall have access to all apparatus and transmission lines on the premises of the party of the second part at any and all times, and shall have the right to have any and all measuring instruments tested, retested and recalibrated at any time for the purpose of ascertaining the condition or accuracy of such instrument or instruments.

VI.

The party of the first part shall also have the right to enter upon the premises of the party of the second part for the purpose of constructing, repairing and maintaining the electrical transmission lines used for the purpose of supplying the electric energy herein agreed to be kept available by the party of the first part for the party of the second part, and the second party grants and gives to the first party the right to construct, maintain [101] and operate transmission line or lines upon and over any part of the premises and property of the second party to reach the place described in paragraph numbered one (1) hereof as the point where said energy shall be kept available, together with the right to erect and con-

struct and maintain any and all poles, arms, cross-arms, wires, and any other matter or thing that may be necessary or proper, including a telephone wire, if desired by the first party, which telephone wire shall also be extended from the electric plant of the first party to the place of business or office of the second party in the vicinity of the place where said energy is to be kept available as described in paragraph one (1) hereof. And in the event that it shall be or become necessary, in order to make or keep available the said electric energy at the said point described in paragraph numbered one (1) hereof, that transmission line or lines and telephone line, or either of them, be erected, constructed or maintained upon or across any premises or property other than the premises and property of the parties hereto, or the premises and property of one of them, the second party shall, at its own cost and expense, and without cost and expense to the first party, procure and obtain the necessary right of way upon and over such premises and property upon, over and along which to erect, construct, maintain and operate such transmission line or lines and telephone line.

VII.

The party of the first part hereby agrees to pay the second party a sum of money not to exceed fourteen thousand dollars (\$14,000.00) for the purpose of reimbursing the party of the second part for the expenditures made and to be made by the second party in connection with the following items:

a. The work done, or in progress of being done, upon the construction of a sawmill at the present

time at Post Falls, Idaho, including a coffer-dam, and construction of wing walls and dam, and [102] placing of materials, etc., for such improvement.

b. The removal or reconstruction of the present saw-dust burner, to a site on the present premises of the party of the second part at Post Falls east of the present saw-mill and plant of the party of the second part, and on the north bank of the Spokane River.

c. The removal or reconstruction of the present dry-kilns to the new location as above designated.

d. The removal and re-erection of the boilers and boiler plant of the party of the second part to a new location as above described.

e. The removal of various sheds, blacksmith shop, etc., to the same location.

f. The cost of changes in machinery now under order by the party of the second part, such changes being necessary by the change in the plant from the construction of the present water power saw-mill to the construction of an electrically operated saw-mill contemplated under this contract.

VIII.

This contract expresses and contains the entire contract on the subject matter hereof. This contract shall not be modified or varied except by written contract. If at any time the terms hereof are not strictly adhered to or enforced, they shall not thereby be deemed waived or modified, but shall as to all subsequent times and dates be deemed in full force and effect unless modified in writing.

IX.

The provision of this contract shall inure to the

benefit of and be binding upon the parties hereto, their heirs, executors, administrators, representatives, successors and assigns, including vendees, purchasers, lessees, renters mortgagees, and any and all other persons, whether claiming by act of party or by operation of law or otherwise. [103]

IN WITNESS WHEREOF, The parties hereto have caused their respective names to be subscribed to this instrument by their respective presidents and secretaries and their respective corporate seals to be hereunto affixed in pursuance of resolutions of their respective boards of trustees, in duplicate, the day and year first above written.

THE WASHINGTON WATER POWER
COMPANY,

By D. L. HUNTINGTON,
2d Vice-President.

[Seal] Attest: H. L. BLEECKER,
As Secretary.

IDAHO LUMBER AND MANUFACTUR-
ING COMPANY.

By JAMES McNAIR,
As President.

[Seal] Attest: H. M. STRATHERN,
As Secretary. [104]

State of Washington,
County of Spokane,—ss.

On this 2nd day of February, A. D. 1905, before me personally appeared D. L. Huntington and H. L. Bleecker to me known to be the 2nd Vice President and Secretary, respectively of

THE WASHINGTON WATER POWER COMPANY

the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they, and each of them, were authorized to execute said instrument, and that the seal affixed is the seal of said corporation, and was so affixed to said instrument by the authority in them vested by the Board of Trustees of said corporation, and that they signed the said instrument by like authority.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

W. J. McKEAN,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington. [105]

*Notary Public in and for the State of Washington,
Residing at Spokane, Washington.*

State of Washington,
County of Spokane,—ss.

On this 14th day of January, A. D. 1905, before me, the undersigned, a notary public in and for the State of Washington, personally appeared Mr. James McNair and H. M. Strathern, to me known to be the president and secretary respectively of the Idaho Lumber and Manufacturing Company, one of the corporations that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of

said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

E. T. WHITE,

Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Filed August 20. A. L. Richardson, Clerk.

[106]

**Plaintiff's Exhibit No. 13 [Agreement, Dated
December 17, 1904, Idaho Lumber & Manufacturing Co. and Washington Water Power Co.].**

THIS INDENTURE, Made this 17th day of December, A. D. 1904, between the IDAHO LUMBER AND MANUFACTURING COMPANY, a corporation, organized and incorporated under the laws of the State of Idaho, the party of the First part and THE WASHINGTON WATER POWER COMPANY, a corporation organized and incorporated under the laws of the State of Washington, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Five Dollars, to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents grant, sell, convey, remise, release and forever quit claim unto the said party of the second part, and to its successors and assigns, all that certain tract, piece and parcel of

land, situated in the County of Kootenai, State of Idaho, which is shown by the blue print or map attached hereto, marked Exhibit "B" and made a part hereof, the said premises being the premises as shown and represented on said blue print or map as enclosed by a red line, and which said premises are described as follows, to wit:

STARTING POINT.

Commencing at a parting point described as follows: Fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections three (3) and four (4), in township fifty (50) north, range five (5) west, B. M.; running thence east one thousand three hundred eighty-three (1383) feet to a point on the center line of *Six* street of the town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four-tenths (1124.4) feet to a point, which is marked "A" on said blue print; thence west two hundred ninety-three (293) feet to a point on the east bank of the north channel of the Spokane River, which is the true place of beginning. [107]

PROPERTY CONVEYED.

running thence south from said true place of beginning ten degrees (10 deg.) east one hundred (100) feet; thence south nineteen degrees (19 deg.) east two hundred ten (210) feet; thence south thirty-three degrees (33 deg.) east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west bank of a canal or sluice thence southerly along the west bank of said canal or sluice to a point at low water mark on the east bank of the north

channel of said Spokane River; thence westerly around the point of land, and thence northerly along the low water mark along the east bank of the north channel of said river to the true place of beginning Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto said party of the second part, and to its successors and assigns, forever.

IN WITNESS WHEREOF, The said party of the first part has caused its name to be subscribed to these presents by its proper officers and its seal to be hereunto affixed, pursuant to resolution of its board of trustees, the day and year first above written.

IDAHO LUMBER AND MANUFACTURING COMPANY.

[Corporate Seal]

By JAMES McNAIR,

President.

Attest: H. M. STRATHERN,

Secretary.

Signed, sealed and delivered in presence of

E. T. WHITE.

ELIZABETH R. STOUT. [108]

State of Washington,

County of Spokane,—ss.

On this 17th day of December, A. D. 1904, before me personally appeared James McNair and H. M.

Strathern, to me known to be the president and secretary respectively of the Idaho Lumber and Manufacturing Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[Seal] E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Filed August 20, 1912. A. L. Richardson, Clerk.
[109]

**Plaintiff's Exhibit No. 14 [Agreement, Dated
December 17, 1904, Idaho Lumber & Manufacturing Co. and Washington Water Power Co.].**

THIS INDENTURE, Made this 17th day of December, A. D. 1904, between the IDAHO LUMBER AND MANUFACTURING COMPANY, a corporation, organized and incorporated under the laws of the State of Idaho, the party of the first part, and THE WASHINGTON WATER POWER COMPANY, a corporation organized and incorporated under the laws of the State of Washington, the party of the second part,

WITNESSETH: That the said party of the first part, for and in consideration of the sum of Five (\$5.00) dollars, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, the following described piece, parcel and tract of land, situate in the County of Kootenai, State of Idaho, which is shown by the blue print or map attached hereto, marked Exhibit "B" and made a part hereof, the said premises being the premises shown and represented on said blue print as enclosed by a red line, and which premises are bounded and particularly described as follows, to wit:

STARTING POINT.

Commencing at a starting point described as follows: Fifty (50) feet north of the meander corner stake on the north bank of the north channel of the Spokane River between sections three (3) and four (4), in township fifty (50) north, range five (5) west, B. M.; running thence east one thousand three hundred eighty-three (1383) feet to a point on the center line of Sixth street of the town of Post Falls, Idaho; thence south one thousand one hundred twenty-four and four-tenths (1124.4) feet to the true place of beginning, which is marked "A" on said blue print.

PROPERTY CONVEYED.

running thence west from said true place of beginning two hundred [110] ninety-three (293) feet to the east bank of the north channel of the Spokane

River; thence south ten degrees (10 deg.) east one hundred (100) feet; thence south nineteen degrees (19 deg.) east two hundred ten (210) feet; thence south thirty-three degrees (33 deg.) east two hundred ten (210) feet; thence east two hundred eleven (211) feet to the west line of a canal or sluice; thence northerly along the west bank of said canal or sluice to a point; thence west sixty-four (64) feet to the true place of beginning.

Together with all water rights and the right to use water and all water power, and all the rights pertaining or relating to water or the use of water or water power, granted or conveyed by Frederick Post and Margaret Post, his wife, by warranty deed dated May 13th, 1893, which deed was filed for record in the office of the County Recorder of Kootenai County, State of Idaho, and is of record in said office at page 417 of Book K of deeds, which deed is to Chas. M. Paterson and H. M. Strathern; and which rights conveyed by said deed to the grantees therein have been subsequently by mesne conveyances transferred and conveyed to, and are now owned and held by the grantor herein. It is intended hereby, and this deed shall be construed to be a deed, transfer and conveyance to and a vesting in the grantee herein of any and all rights to the use of water or the use or development of water power and all water rights or the right to use water acquired, granted, given, conveyed, or transferred to or vested in the grantees in said deed last above-mentioned, or either of them, their successors and assigns.

TO HAVE AND TO HOLD THE SAID PREMISES AND PROPERTY, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof, unto said party of the second part, its successors and assigns, forever.

And the said Idaho Lumber and Manufacturing Company, party of the first part, for itself and its successors, does covenant with [111] the said party of the second part, its successors and assigns, that said party of the first part is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in the manner and form aforesaid, and that the same are free from all encumbrances.

And the said party of the first part, and its successors, the said premises and property, in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same, or any part thereof, shall and will warrant, and by these presents forever defend.

IN WITNESS WHEREOF, The party of the first part has caused its name to be subscribed to these presents by its proper officers and its corporate seal to be affixed hereto, in pursuance of resolution

of its board of trustees, the day and year first above written.

IDAHO LUMBER AND MANUFACTUR-
ING COMPANY.

[Corporate Seal]

By JAMES McNAIR,
President.

Attest: H. M. STRATHERN,
Secretary.

Signed, sealed and delivered in presence of:

E. T. WHITE.

ELIZABETH R. STOUT. [112]

State of Washington,
County of Spokane,—ss.

On this 17th day of December, A. D. 1904, before me personally appeared James McNair and H. M. Strathern, to me known to be the president and secretary respectively of the Idaho Lumber and Manufacturing Company, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

[Seal]

E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

Filed August 20, 1912. A. L. Richardson, Clerk.

[Plaintiff's Exhibit No. 15.]

Grantor.	Grantee.	Date of Deed.	Description.	Consideration.	Valuation 1911
F. L. Wells	F. W. Fitze	Feb. —, 1911	E½ of Lot 4 Blk Q town of Cda	4000	2125
F. L. Wells	Jos. Boie	July 17, 1911	Lot 14 Blk. 2 Taylors Park	400	340
Annie Weil	Benj. Zimmer	July 1, 1911	Lot 9, Blk. 27 Town of Cda.	1900	1105
Maud M. Cooper	Bert Baird	July 24, 1911	Lot 6, Blk. D City of Cda.	400	552
John B. Taylor et al.	C. A. Overton	July 26, 1911	Tr. 24 & W½ of Tr. 23 Fruitlands Add.	700 (23-24-25)	655
Bertha Servis	C. E. Tholen	June 12, 1911	Lot 2 Blk. 2 Varnums Add.	500	234
H. B. Treff	Jared H. Manley	July 28, 1911	Lot 3 Blk. 11 O'Briens Add.	1200	890
			N. 26 ft. of S. 60 Ft. Lot 6 Blk. H Town of Cda.	3000	1020
Barnet M. Whiting	J. A. Singer	April 26, 1911	Lots 1 & 2 Blk. 28 Lakeshore Add.	850	298
Wm. E. Seelye	Raymond W. Seelye	Aug. 11, 1911	Lot 4, Blk. 5 Sanders Park Add.	300	425
John B. Taylor	W. J. Baxter	Aug. 18, 1911	Lots 1, 2, 3, 4, Blk. 32 Sherman Add.	450	340
Letitia V. Hunt	Ed. Gunn	Aug. 21, 1911	Lot 3 Blk. B. Nevins Add.	150	64
Geo. Hawk	J. H. Robinson	June 26, 1911	Lot 3 Blk. 4 Kaesemeyer Add.	225	60
Willard A. Hicks	Mary Brennan	June 27, 1911	S½ of Lots 1 & 2 Blk. 13 Reid's Add.	1600	70 each
Robt. H. Elder	C. H. Potts	Aug. 15, 1911	Lot 7 Blk. 19 Forest Heights	1200	340
Delia Culler	W. D. Laird	Aug. 21, 1911	Lots 11 & 12 Blk. 4, O'Briens 1st Add.	3000	2225
Daniel Devine	E. N. Bell	Sept. 18, 1911	E½ of Tr. 14 & 15 Tr. A. Columbus Park	325	340
Estelle Graham	Kuute H. Larson	July 25, 1911	Lot 2 Blk. 4 Sims Add.	100	128
Fred E. Wonnott	Robt. H. Elder	May 5, 1911	Lot 11 Blk. 1 Lakeshore Add.	250	106
Andrew Boe	H. C. Taylor	Sept. 18, 1911	S½ of N½ of Blk. 3 Reids Add.	850	680
John E. Nordstrom	Elzear Pelletier	Oct. 30, 1911	Lot 7 Blk. 18 Reids Add.	800 (Lots 6 & 7)	1460
John B. Taylor et al.	John A. McFarlane	Oct. 3, 1911	W 50 ft. lot 14 Blk. 13 Reids Add.	2000	795
Sophonria A. Hill	W. H. Park	Oct. 3, 1911	Lots 1 & 2 Blk. 14 Roche Park Add.	600	145
Frank F. McNutt	Albert M. Miller	Oct. 11, 1911	Lot 6 Blk. 10 Simms Add.	2250	1589
Burton Gross	Herbert W. Stickney	Dec. 4, 1911	Lots 3, 4, 5, Blk. 20 Lakeshore Add.	350	43 each
Geo. K. Evans	Wm. O'Neal	Oct. 30, 1911	Lots 7 & 8, 9, 10, 11, 12, Blk. 3 Columbus Park	1000	552
Olaf Benson	Fritz Lillie	Dec. 7, 1911	Lot 2 Blk. 16 Reids Add.	750	701
Wm. Garrey	Louisa Garrey	Dec. 6, 1911	Lots 5 & 6 Blk. 22 O'Briens 3rd.	1000	760
Pameila R. Harte	W. B. Burdick	Nov. 11, 1911	Lot 4 Blk. 38 O'Briens 4th Add.	350 (Lots 3-4-5)	1190
John J. O'Brien	C. A. Hawkins	Dec. 15, 1911	Lot 3 Blk. 38 O'Briens 4th Add.	350 (Lots 3-4-5)	1190
John J. O'Brien	N. E. Nelson	Dec. 15, 1911	Lot 10 Blk. 28 Lakeshore Add.	550	255
H. C. Michie, Jr.	Elizabeth A. Hand	Sept. 28, 1911	Lots 12, 13, 14 Blk. 15 O'Briens 2nd. Add.	800 12 & 13 are 213 each	14 is 255
Sylinda A. Warren	C. D. Stevens	Dec. 21, 1911			

Grantor.	Grantee.	Date of Deed.	Description.	Consideration.	Valuation 1911 after Equalization.
J. B. Hogan	Mary Brennan	Jan. 13, 1911	Tract 4 Sherman Park	500	319
Jos. Nadeau	J. E. Petersen	Jan. 9, 1911	Lot 4 Blk. 8 O'Briens 1st Add.	800	553
John B. Taylor et al.	Gilbert Telford	Jan. 18, 1911	Lot 3 Blk. 2, College Add.	80	43
John B. Taylor et al.	Julia A. Malkson	Jan. 23, 1911	Tracts 12 and 13 Fruitlands.	1000	1793
J. W. Palmerton	Guas Tompkins	Jan. 16, 1911	Tract 61, Sherman Park	800	425
Fred L. Borgan	B. A. Loveless	Jan. 23, 1911	W $\frac{1}{2}$ of Lot 2 Blk. 1 Russell Add.	2000	2438
John J. O'Brien	Jas. V. Hawkins	Feb. 4, 1911	Lot 7 Blk. 30 O'Briens 4th Add.	1625	893
Thos. E. Hedel	Mary O'Keefe	Jan. 31, 1911	Lots 7 & 8 Blk. 24 O'Briens 3rd.	650	255 each
Hayden-Cd.A Irr. Co.	F. W. Fitze	Jan. 17, 1911	Lot 5 Blk. 12 O'Briens 2nd	1000	680
Hans P. Jorgenson	L. W. Libby	Feb. 23, 1911	Lot 4 Blk. 1 Stetlers Add.	275	(Lots 3 & 4) 127
T. B. Leonard, Executor	Morris B. Sampson	March 4, 1911	Tract 89 Sherman Park.	1000	723
W. S. Gentry	Sallie Gentry	March 6, 1911	Lot 14 Blk. 17 Reids Add.	500	(Lots 13 & 14) 957
John B. Taylor et al.	F. A. Rupp	Feb. 6, 1911	Lot 1 Blk 5 Taylors Add.	300	319
Geo. C. Middlebrook	Clare A. Hodge	March 2, 1911	Lot 7 Blk. 3 North Park Add.	1320	widow
Grant M. Pickett	Edna Wilson	March 20, 1911	Lots 6 & 7, Blk. 10 Roche Park Add.	300	34 each
W. E. Merriam	C. Bernhard	March 21, 1911	Lot 1 Blk. 6 Russells Add.	1000	660
John B. Taylor	C. A. Wilen et al.	March 21, 1911	Lot 11 Blk. 4 Lakeshore Add.	200	128
Anna Stallsmith	Daniel Casey	March 27, 1911	Lot 10 Blk. 6 Columbus Park	1300	760
John B. Taylor et al.	David Nevins	March 29, 1911	Lot 12 Blk. 7 Taylors Add.	1468	638
John B. Taylor	Albert H. Featherstone	Jan. 2, 1911	Lot 9 Blk. B Town of CdA.	5000	1998
L. M. Burton	Wm. M. Toles	March 21, 1911	Lots 10 & 11 Blk. 12 Lakeshore Add.	600	255
L. E. Danes	Kate P. Bonneville	April 8, 1911	Lots 11 & 12 Blk. E City of CdA.	650	510
Marie E. Blair	Arthur Wigfield	April 14, 1911	Lots 11 & 12 Blk. 18 O'Briens 3rd Add.	875	425
Wallace Lovely	C. L. Drew	April 10, 1911	Lots 4 and 5, Blk. 7 Taylors Add.	3000	1283
R. H. Mercer	N. D. Wernette	Feb. 13, 1911	Lots 2 Blk. 9 O'Briens 2nd. Add.	1600	935
Alyious V. Rehm	Maggie McNutt	May 17, 1911	Lots 1 & 2 Blk. 14 Roche Park Add.	500	145
Jos. G. Scholtz	Jos. Malham, Sr.	May 25, 1911	Lot 3 Blk. 2 Blackwell Park	1600	893
Alice E. Baldwin	Maud B. Fulkerson	May 27, 1911	Lots 5 & 6 Blk. 44 Simms Add.	500	170
John A. Clarke	Peter Lund	June 1, 1911	Tracts 41 & 42 Fruitlands Add.	925	638
Nora Bernhard	H. B. Waddell	June 5, 1911	Lot 1, Blk. 6 Russells Add.	500	660
Edward McMunegal	Jas. F. Flynn	June 28, 1911	Tracts 59 & 60 Fruitlands Add.	1800	510
C. K. Leithe	Wm. A. Daggett	July 10, 1911	Lot 6 Blk. 4 Forest Heights Add.	1050	680
Paul M. Elder	Frederick N. Kilborn	June 28, 1911	Lot 14 Blk. 2 Hunts Add.	950	510
Landon C. Irvine	Winnett Bedall	May 23, 1911	Lots 4 & 5 Blk. 19 Town of CdA. . . . 3000	3000	1275

Grantor.	Grantee.	Date. of Deed.	Description.	Consideration.	Valuation 1911 after Equalization.
Elizabeth N. Palmer	Chas. Carlson	Nov. 9, 1911	Lots 8 Blk. 30 Town of Cda.	1100	702
F. W. Esgate	W. F. Bigelow	Jan. 20, 1912	Lots 7 & 8 Blk. 35 O'Briens 4th.	650	(Lots 7-8-9) 979
Mary Smith	Daisy Gay	Jan. 27, 1912	Lot 5 Blk. 3 Costello Park	190	107
Jos. Boie	Jos. Bruschkiewitz	Jan. 25, 1912	Lot 14 Blk. 2 Taylors Park	700	340
Sophia Ruth	Lawrence M. Larson	Dec. 28, 1911	Lot 2 Blk. 6 O'Briens Add.	1400	1063
John B. Taylor et al.	E. D. Brink	Feb. 3, 1912	Lots 5 & 6 Blk. 6 Taylor's Add.	750	595
John B. Taylor et al.	Mary F. Scott	Feb. 23, 1912	Tr. 35, 36, 37, Fruitlands Add.	780	255
E. V. Boughton	Lillie A. Williams	Feb. 17, 1912	Lot 1 Blk. 2 Varnums Add.	1900	805
Lillie A. Williams	E. V. Boughton	Feb. 17, 1912	Lot 6 Blk. 19 Forest Heights	3000	1162
Caesar Masini	Anne McKinnon	Feb. 2, 1912	Lot 8 Blk. 4 North Park Add.	250	213
Edward Lawson	Emma O'Dell	Feb. 27, 1912	Blk. 43 Simms Add.	3200	1360
Arthur A. Warner	Alma D. Sowder	Feb. 14, 1912	Lots 9 & 10 Blk. 7 Woodlawn Park	1250	460
W. J. Baxter	M. J. Wernette	Mar. 18, 1912	Lot 4 Blk. 5 Sanders Park	950	425
Merion Woodruff	John M. Bennett	Jan. 10, 1912	Lots 8 & 9 Blk. 5 Columbus Park	375	170
Frank F. McNutt	Albert M. Miller	Feb. 13, 1912	Lots 1 & 2 Blk. 14 Roche Park Add.	600	145
V. W. Sander	Charlie Gridley	Mar. 28, 1912	Lots 12, 13, 14, Blk. 27 Lakeshore Add.	1600	972
John B. Taylor et al.	C. W. Dority	Apr. 2, 1912	Lot 1 Blk. 17 Taylors Add.	605	170
Emma Peterson	Theodore Hill	Apr. 1, 1912	Lot 3 Blk. A Sanders Add.	500	225
Mary E. Robinson	Jos. Druschkiewitz	Apr. 2, 1912	Lot 15, Blk. 2 Taylors Park	1200	616
Chas. Perrault	Columbia Investment Co.	Feb. 19, 1911	Lot 8 Blk. 29 Town of Cda.	1600	935
John O'Connor	Robt. I. Shontz	Mar. 25, 1911	S½ of Tr. 79 Fruitlands	4000	425
John B. Taylor	First National Bank	Mar. 8, 1911	E½ of Lot 2 Blk. H Town Cda.	1000	3655
Fred L. Tiffany	Ethel Johnson	Apr. 24, 1912	Lot 2 Blk. 13 Simms Add.	200	149
Fred B. Chase	Fred B. Wolff et al.	Apr. 16, 1912	Lots 5 & 6 Blk. 6 Lakeshore Add.	500	255
Minnie Dehlin	Elizabeth Delaney	Nov. 25, 1911	Lot 6 Blk. 5 O'Briens 1st Add.	1500	850
Wm. Dollar	Geo. S. White	May 9, 1912	Lots 11 & 12 Blk. 5 Kaesemeyer Add.	200	179
Phyllis Gunderson	R. M. Hart	May 11, 1912	N½ of Lot 6 Blk. M. Town of Cda.	(100)	not true Con. 3230
Maggie E. Rice	Adolph Donart	Mar. 20, 1912	Lot 2 Blk. 2 Russells Add.	1000	935
Mary Schroeder	Sadie A. Hatfield	May 7, 1912	Lot 15 Blk. 2 W. H. Hunts Add.	3500	1487
Wm. C. Harris	Patrick Lundy	May 29, 1912	Lot 4 Blk. 12 Simms Add.	100	138
John B. Taylor et al.	Patrick Lundy	June 4, 1912	Lots 9 & 10 Blk. 3 College Add.	200	170
John B. Taylor et al.	Frank Yuhas	June 10, 1912	Lots 10 & 11 Blk. 7 Lots 4 & 5 Blk. 8 College Add.	350	Lots 10-11 Blk. 7 213 Lots 4-5 Blk. 8 85

Grantor.	Grantee.	Date. of Deed.	Description.	Consideration.	Valuation 1911 after Equalization.
John B. Taylor	John O'Neil	June 15, 1912	Lot 3 Blk. 1 Lakeshore Add.	150	85
Ada Bailey	Anna Wright	May 12, 1912	Lot 6 Blk. B Sanders Add.	1100	468
Stephen M. Currie	Wm. H. Skinner	July 1, 1912	Lot 8 Blk. 11 O'Briens 2nd Add.	550	382
Wm. A. Baz	W. R. Williams	July 1, 1912	Lot 9 Blk. 14 Taylors Add.	350	85
Elizabeth Delaney	Lena Cunningham	May 7, 1912	Lot 6 Blk. 5 O'Briens 1st. Add.	1350	850
H. E. Mathews Admr.	T. S. Draper	Jan. 2, 1912	½ int. Lot 10 Blk. 17 Reids Add.	775	765
John J. O'Brien	Mary T. Tuttle	July 5, 1912	Lots 8 & 9 Blk. 33 O'Briens 4th Add.	600	638
Frederick W. Heidelberg	Ada R. Smith	July 20, 1912	Lot 8 Blk. 7 Forest Heights	600	383
			Filed August 20, 1912. A. L. Richardson, Clerk.		[117]

Plaintiff's Exhibit 16.

Grantor.	Grantee.	Date		Subdivision.	Sec. or Lot.	Twp. or Blk.	Range.	Consid- eration.	Value placed upon property described by Assessor of Kootenai Co. for taxation in 1911.	Record Book.	Page.
Marion C. Wharton Wm. C. Nettleton Lane Lumber Co.	Robert B. Paterson	May 15	11	Lot 2	13	53	5 W	3500	616		
	Fred R. Hupp	Feb. 27	11	W/2 NW; W/2 SW	26	52	3 "	3000	1632	42	648
	Ada B. Crossfield	May 13	11	E/2 SW; SE of NW; SW NE	27	49	1 "	2000	680	42	622
James P. Ledbetter C. B. King	G. W. Rea	May 1	11	E/2 NE	26	53	3 "	4000	476	42	577
	M. D. Wright	Mch. 24	10	SE of NE; E/2 of W/2 of SE/4	7	51	3 "	2000	1020	43	181
Thomas Gouge	Oliver R. Pate	Apr. 15	11	SW of SW; Lots 3-4 & SE of NW	5	43	2 "				
	C. A. Walker	Mch. 18	11	SE of NE & E/2 SE.	32	44	2 "	12000	4122	42	519
James L. Rogers Lewis B. Anderson Robt. H. Muncy Joseph McEachern Avery A. Houck	Mrs. Anna Benson	Apr. 17	11	SW/4	12	44	1 "	1200	1020	42	512
	Fred E. Melder	Apr. 5	11	NW of SE & Lot 2	2	49	4 "	1500	885	43	149
	John Tiede	Jan. 4	11	NE/4	33	53	5 "	1250	544	43	145
	T. J. Demorest	Oct. 6	09	S/2 NE; NW of NE SE of NW.	18	53	3 "	4000	1131	42	414
					28	52	5 "	4000	1609	42	392
Howard C. Thompson Clara H. Bradford	D. E. Danby, et al.	Mch. 24	11	NE/4	20	52	5 "	1000	680	43	119
	Harry G. Crawford	Jan. 21	11	N/2 NE; SE of NE E/2 SW of NE	23	48	2 "	5000	978	42	382
Patrick H. Wall Thomas Grady Veronica Shields	Lane Lumber Co.	Mch. 11	11	Lots 5-6-7-8-	1	47	2 "	5300	680	42	293
	John F. Fox	Dec. 17	10	N/2 SE; S/2 NE	17	43	1 E	4250	1190	43	66
	Rose Lake Lumber Co.	Feb. 13	11	E/2 SW; NW of SW	7	49	1 W	4000	2312	43	1
Phillip Brode S. E. Beggs	Mary Heyn	Jan. 5	11	SW of SW	30	50	4 "	950	170	43	6
	Thomas Hye	Jan. 3	11	SE of SW	35	53	3 "	9600	952	39	616
Albert Bolks J. W. Siler S. E. Beggs Joseph A. McLain Fannie Colgate Joseph Assed	Hawkeye Fuel Co.	Jan. 17	1	S/2	26	53	4 "	5600	1360	39	582
	N. Nelson	Nov. 30	10	SW of NW & Lot 2	30	52	4 "	1900	752	39	536
	Thomas Hye	Dec. 9	10	NW/4	26	53	3 "	3200	940	39	489
	J. A. Deremore	Oct. 25	10	NW/4	28	52	4 "	2400	816	41	233
	Frank G. Minzel	Nov. 23	10	S/2 SW	12	50	5 "	2500	1041	39	430
	Wm. C. Palmer	Nov. 12	10	N/2 NE; SE of NE SW of SE.	22	49	1 "	5250	660	41	146
					15						
Sarah D. Valentine	J. Gordon Marsh	Nov. 14	10	NW/4; SE/4 & E/2 SW/4	13	52	4 "	7500	2040	41	117

Value placed
upon property
described by
Assessor of
Kootenai Co.
for taxation

Grantor.	Grantee.	Date.	Mo.	Day.	Year.	Subdivision.	Sec.	Twp.	Range.	Consid- eration.	purposes in 1911.	Record Book.	Page.
Ira S. Troyer	H. L. Moody	Oct. 29	10		S/2 NW; & Lots 3 & 4	5	51	5 W	3000	3000	2040	41	82
Amel H. Knox	Ora M. Williams	Aug. 24	10		NW of NE; SW of SE	27	44	1 "	3000	3000	615	41	81
Amelia Nicolai	Reuben Day	Nov. 3	10		Lots 1 & 2 S/2 SE;	3	51	5 "	8500	8500	3689	41	46
Adolph H. Albert	C. E. Berry	Oct. 18	10		SW of NE	34	52	5 "	1600	1600	1190	40	647
W. J. McClare et al.	Eliza K. Beggs	Sept. 28	10		NW/4	34	51	5 "	8000	8000	4590	39	318
Andrew J. Van Amberg	Cornelia M. Van Domeln	May 3	11		Greenacres, Plat 5	3 & 4	51	4 "	2725	2725	850	42	585
C. R. Hesselstine	Etta M. Wooster	May 18	11		Greenacres, Plat 2	14 & N/2 15	299		1500	1500	850	42	556
Interstate Irrigation Co.	V. O. Kretsinger	Apr. 29	11		Hayden Lake Tracts	89	299		1850	1850	510	42	494
Effie C. Burns	Joe Goldstein et al.	Apr. 10	11		Greenacres, Plat 5	3	89		2500	2500	425	42	227
J. F. Thomas	J. S. Skinner	Feb. 9	11		Greenacres, Plat 7	5 & 6	3		4000	4000	850	42	179
A. J. Van Amberg	James Neilson	Feb. 14	11		Greenacres Plat 5	140	140		1250	1250	531	42	142
Hayden Cld'A Irri. Co.	Elmer E. King	Jan. 3	11		Dalton Gardens	75 & E/2 82	75 & E/2 82		6000	6000	1275	39	626
W. H. Honefenger	Wm. Dawson	Feb. 4	11		Avondale	3	3		2000	2000	425	42	89
J. S. King	J. S. Thomas	Dec. 3	10		Greenacres Plat 7	17	17		3500	3500	850	41	374
W. F. Irish	Donald H. McLean	Mch. 11	10		Greenacres Plat 2	127	127		1650	1650	425	41	354
Emil Kohles	O. P. Flensburg	Oct. 29	10		Greenacres Plat 7	11	47		400	400	280		
Spirit Lake Land Co.	T. M. Skok	Jan. 10	11		Spirit Lake	5 & 6	44		500	500	170	43	255
Alicia E. Baldwin	Maude F. Fulkerson	May 27	11		Simms Add Cld'A	3	2		1600	1600	893	43	253
Joseph G. Shultz	Joseph Malham, Sr.	May 25	11		Blackwell Park Add Cld'A	10	8		200	200	149	43	165
John B. Taylor et al.	John W. Carr	Apr. 18	11		College Add Cld'A	11 & 12	12		600	600	212	43	128
L. M. Burton	Wm. M. Toles	Mch. 21	11		Lakeshore Add Cld'A	10	6		1300	1300	850	43	102
Anna Stallsnuth	Daniel Casey	Mch. 27	11		Columbus Park Add Cld'A	W/2 2	1		2000	2000	2168	39	604
Thomas E. Hedall	B. A. Loveless	Jan. 23	11		Russells Add Cld'A	16	20		350	350	51	41	158
Spirit Lake Land Co.	Pearl E. Lubben	Nov. 15	10		Spirit Lake	6	10		1200	1200	289	41	72
James Hannah	Frank Benjamin	May 31	10		Spirit Lake								

Grantor.	Grantee.	Date.		Subdivision.	Sec.	Twp.	Range.	Consid- eration.	Value placed upon property described by Assessor of Kootenai Co. for taxation	purposes in 1911.	Record Book.	Page.
		Mo.	Day.	Year.								
Lewis Shaw	A. L. Hopkins	Sept.	7	11	S $\frac{1}{2}$ Tract 162 Hayden Lake							
Bradford-Kennedy Co.	Sarah C. McKee	Aug.	24	11	Lots 2 & 3	3	49	2700	765		43	501
G. W. Hoag	H. B. Lancaster	Sept.	7	11	NE $\frac{1}{4}$	34	50	1100	425		44	582
E. S. Harding	C. A. Stowe	Aug.	22	11	NW $\frac{1}{4}$	32	53	3000	1012		44	585
D. G. Hoekett	J. C. Long	Dec.	29	10	NE $\frac{1}{4}$	14	53	7500	2975		43	537
E. E. Season	F. G. Ziegler	Sept.	25	11	NW $\frac{1}{4}$	26	53	4000	995		43	527
A. H. De Wolf	W. J. Lang	Oct.	4	11	Lots 2 & 3	3	49	6500	1564		45	55
A. Nielson	W. J. Munkel	Oct.	9	11	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	8	49	2000	425		43	577
F. J. Johnson	Leonard McCrea	Oct.	24	11	Lot 2	10	48	900	340		43	594
Green Nance	L. R. Mairet	Nov.	8	11	E $\frac{1}{2}$ of SW $\frac{1}{4}$	32	49	3000	553	Not on Roll	43	634
W. T. Roe	F. J. Willard	Nov.	1	11	NW $\frac{1}{4}$	15	48	3000	408		45	269
L. L. Whitcomb	Alex. McDonald	Nov.	9	11	Lots 2 & 3	21	48	3500	408		46	31
M. J. Wessels	W. J. Hofman	Nov.	16	11	SW $\frac{1}{4}$	8	50	2000	485		45	276
								7600	680		45	385

		Description of land	Named Consid- eration, (Dollars)	Acre- age.	Value placed on property by Assessor for Taxation purposes 1911. (Dollars)	Date filed.
Mortgagor. John F. Burton	Mortgagee. Russell Rogers	Lot 1 Sec. 12-48-6 W	1800	54	\$1432	6/30/1911
Henderson M. Rumberg.	Henry K. Priest	Tract 62 Dalton Gardens	650	5	531	6/30/1911
Thomas Hye	Emma E. Fillman	SW $\frac{1}{4}$ Sec. 26-53-3 W	1000	160	922	6/30/1911
H. L. Gilliland	Sarah F. Hunt	Tracts 14-18 Inc. Fruitland's Add.	2000	10	2762	6/30/1911
Chas. N. Downie	First Bank Harrison	E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 28-49-2 W.	1100	160	1309	6/30/1911
Alex. Anderson	Mosses Mummert	W $\frac{1}{2}$ SE $\frac{1}{4}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 32-54-2 W.	1200	160	1632	6/30/1911
W. L. Sommers	Armin & Tupper Mfg. Co.	SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$ 25-48-4 W	2000	160	1717	6/23/1911
John F. Burton	Anna C. Hanson	NE $\frac{1}{4}$ of SW $\frac{1}{4}$ SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 5, T. 48 R. 5 W	800	80	935	6/16/1911
Christina Rumberg.	Henry Priest	Tract 63 & 64 Dalton Gardens.	1600	10	1063	6/1/1911
Henry C. Calhoun	Mrs. Evelyn Bird.	NW $\frac{1}{4}$ Sec. 28 T. 50, R. 3 W B. M.	2800	100	1726	6/2/1911
J. B. Campbell	J. B. Campbell, Jr.	SW $\frac{1}{4}$ Sec. 32 T. 52 R. 3 W B. M.	2000	160	1930	6/3/1911
Chs. B. Spear	A. E. Branson	Tract 28 Plat 5 Greenacres.	300	5	425	6/3/1911
C. Ross Lodwick	I. B. Casey	Blk. 24 Plat 4 Greenacres.	804	10	680	6/5/1911
J. A. Moberly	I. H. Stockdale	Tract 260 Hayden Lake Irrigation Tracts.	1100	10	850	6/6/1911
Ayers D. Lundy	Robt. C. Wellwood.	Tracts 2, 4, 14, 17, 18, 20, 30, Blk. 26 Post Falls Irr. T.	7000	70	5850	5/20/1911
Cornelia M. Van Domeln [121]	Jessie B. Van Amburgh	Tracts 3-4 Plat 5 Greenacres	1200	10	850	5/24/1911

Mortgagor.	Mortgagee.	Description of land	Named Consideration. (Dollars)	Acres.	Value placed on property by Assessor for Taxation purposes 1911. (Dollars)	Date filed.
Elsworth H. Ryder	Jennie Monagle	Mortgaged.				
John H. Herwig	W. S. Peters	Tracts 61-62 Plat 5 Greenacres.	1000	10	978	5/26/1911
		Tracts 155 & 156 Hayden Lake Irr. Tracts.	1100	20	1700	5/11/1911
A. W. Enslow	G. A. Warsinska.	Tract 33 Plat 9 Greenacres.	466	5	638	5/19/1911
C. H. Braden	Josiah Fisher	W $\frac{1}{2}$ Tract 189 Hayden Lake Irr. Tracts.	300	5	425	5/15/1911
W. H. Prephoff	Edward Marcott	Tract 223 Hayden Lake Irr. Tracts.	1000	10	850	3/7/1911
W. E. Kope	Dora M. Schritsmeir	Tract 118 Hayden Lake Irr. Tracts.	900	10	850	5/1/1911
	Dora M. Schritsmeir	SW $\frac{1}{4}$ of NW $\frac{1}{4}$ & Lot 1 Sec. 16 T 50 R 3 W. B. M.	1400	80	850	5/1/1911
Chas. H. Johnson.	Emma B. Stark	SE $\frac{1}{4}$ of SW $\frac{1}{4}$ SW $\frac{1}{4}$ of SE $\frac{1}{4}$ & Lots 8-9 Sec. 7 T 50 R. 4 W	2250	153	1190	5/8/1911
Lost Lake Lumber Co.	Warren Truitt	N $\frac{1}{2}$ of NW $\frac{1}{4}$ Lot 4 Part Lots 5-6-7 Sec. 11 T 50 R. 4 W	4000	133	3392	1/27/1911
E. B. Rippert	Thos. E. Holm	Tract 25 Blk. 31 Post Falls Irr. Tracts.	1500	10	850	1/27/1911
Fred H. Bradbury	M. L. Bewis	Lots 2-3 SW $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 2 T 51, R 5 W SW $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 32 T 52 R 5 W	1500	194	1267	1/28/1911
E. B. Rippert	Thos. E. Holm	Tract 25 Blk. 31 Post Falls Irr. Tracts.	1500	10	850	1/30/1911
Goe H. Johnson.	Frank E. Smith	W $\frac{1}{2}$ of NW $\frac{1}{4}$ N $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 13 T 48 N R 3	1000	160	1147	7/13/1911
Frank E. Durring	Austin Ready	Lots 6-7 15-16 Sec. 6 Lots 1-7 Sec. 7 R 48, R 1 W.	2700	164	1700	7/14/1911

**Plaintiff's Exhibit No. 17 [Report of Proceedings
Had Before County Commissioners of Kootenai
County, July 17, 1911].**

**BEFORE THE COUNTY COMMISSIONERS OF
KOOTENAI COUNTY, IDAHO.**

In the Matter of the Petition for a Reduction of
Assessment of Property of THE WASHING-
TON WATER POWER COMPANY, Lo-
cated in Kootenai County, Idaho.

BE IT REMEMBERED, that the above-entitled
matter came on to be heard at Coeur d'Alene, Idaho,
the 17th day of July, 1911 at 10 o'clock A. M. before
the above Commissioners.

There were present, Messrs. David Meyers,
(Chairman) J. L. Ferguson and George W. Flem-
ing, County Commissioners of Kootenai County;
Messrs. John P. Gray and Charles L. Heitman,
representing the Petitioner; Mr. N. D. Wernette,
representing Kootenai County, and Mr. Fred E.
Wonnacott, Assessor and Tax Collector.

Thereupon the following proceedings were had and
done, to wit:

Mr. GRAY.—There is a petition that was sworn
to. If you wish I will read this, so that all of the
Commissioners can hear it.

Comr. FLEMMING.—Yes, that would be better.

Mr. GRAY.—Who do you want—Wonnacott? I
will go up and get him if you wish.

Chairman MEYERS.—(At Phone.) I would like
the Assessor's office, if you please.

Mr. HEITMAN.—We are in session until we get

through, are we?

Comr. FERGUSON.—Yes.

Chairman MEYERS.—Is Fred C. Wonnacott there? Can you get in touch with him anywhere? The Washington Water Power [124] Company's representatives are here this morning. When he comes let him know, will you?

Mr. GRAY.—I will read this petition, so all three of your gentlemen can hear it. The stenographer need not take this. I can give you each a copy of it I think. You might each of you follow it. I will start in at the top of the second page. (Reading petition.)

In that copy of the petition which I have there I told you there might be some figures there that would require correction.

Mr. WERNETTE.—Yes, sir.

Mr. GRAY.—On page 2 at the top of the page, that should be, "The second Monday of January, 1911."

Page 3, you have a figure there, \$874,798.42 that should be \$854,339.42; and some place in there, the cost of that, on page 6, in that paragraph 7, 9th line, that should be \$5,000, the original cost of that bridge, instead of \$2,500.

Mr. WERNETTE.—Ought to be \$5,000?

Mr. GRAY.—Yes, that is, the original cost of it.

Mr. Gray resumed and concluded the reading of the petition.

Mr. GRAY.—Now, gentlemen, we have presented this petition and Mr. McCalla, the General Manager of The Washington Water Power Company is here, to be examined by you and to state any facts in con-

nection with this petition. I have said to you that Mr. McCalla will state to you the various figures and costs, and what that property earns; and I have said to you before, informally, that if you have any question of any of the figures that Mr. McCalla gives, if you get a certified accountant, I would prefer for you to get one who has had [125] experience in public service and investigations, and our books will be open to him for investigation, to satisfy you that we are correctly stating the figures, costs and earnings of that plant.

Comr. FLEMMING.—Did Mr. Wonnacott himself place those valuations?

Mr. GRAY.—Yes, sir.

Mr. WERNETTE.—Where is Mr. Wonnacott?

Comr. FLEMMING.—I have just phoned, but he is not in the office now, and he will be notified as soon as he comes in.

Mr. WERNETTE.—We will want him here.

Mr. GRAY.—Another matter that I spoke to Mr. Wernette about. He has that new pole line that has just been put into commission assessed at twenty-five miles in length; it is only twenty-three. I called Mr. Wernette's attention to it, and he said there would be no trouble about that, but I suppose I ought to file a petition, and if you will give me permission, I will file that during the day.

Mr. WERNETTE.—That will be all right. I think the Commission have not got any objection.

Mr. GRAY.—Mr. McCalla, if you will swear him, will state that that is the length of the pole line.

Comr. FLEMMING.—Have you read one of those petitions?

Mr. WERNETTE.—Yes, I have got it up there; I have not read it over yet.

Mr. GRAY.—One preliminary matter I wanted to take up, and that is the question of that pole line that you assessed at a thousand dollars a mile; it is only twenty-three miles instead of twenty-five. [126]

Assessor WONNACOTT.—If that is the case, why, that is certainly all right but we have not any—I should think that the Board ought to be advised as to the actual mileage. That is real, actual mileage, is it?

Mr. GRAY.—Yes, sir.

Chairman MEYERS.—Yes; there should be an affidavit to that effect.

Assessor WONNACOTT.—It should be cut \$2,000 on that mileage; there should be two miles cut off of that as assessed. It should be twenty-three instead of twenty-five. We took our map for it.

Mr. GRAY.—You got it pretty close. I will file the petition this afternoon. I think Mr. McCalla should be sworn. Swear him Mr. Meyers.

Chairman MEYERS.—On this matter of the mileage?

Mr. GRAY.—Yes, sir, and you can have his affidavit.

Comr. FLEMMING.—This gentleman ought to be here during all of this procedure. You might swear him to the statement of all that is pertinent to this matter.

Comr. MEYERS.—You swear the statements you

will give as to The Washington Water Power Company are true, and nothing but the truth, so help you God?

Mr. C. S. McCALLA.—Yes, sir.

Mr. GRAY.—On that item of pole line, Mr. McCalla, which has been assessed at twenty-five thousand dollars, one thousand dollars per mile, which is the new pole line running to the Pend d'Oreille line, what is the eastern edge of this county, what is the length of that pole line?

Mr. C. S. McCALLA.—Twenty-three miles.

Mr. GRAY.—I will simply file a formal petition asking for that reduction. [127]

Now, how would you gentlemen like to have me proceed with Mr. McCalla? Do you want to examine him about that?

Mr. WERNETTE.—Will you want to go into details first, or want to examine him and bring out certain facts.

Mr. GRAY.—I thought perhaps, Mr. Wernette, in view of the statement in the petition, it is not necessary for me to, unless you desire to have me do so. I can make a statement to the Commissioners and to you, which would perhaps assist you in examining Mr. McCalla, if you like.

Mr. WERNETTE.—You can do that if you want to.

Mr. GRAY.—Now, we have presented, gentlemen, this petition, in which we set forth the value of that plant, if based upon its cost. We also have set forth the value of the plant if based upon its earning capacity. My own judgment is that the earning capa-

city is always the proper method for arriving at the value of a public service plant of any kind. It is the one that is adopted practically in all of the States. It is impossible, of course, to definitely say that a public service property is worth just so many dollars, and it has been recognized in most of the States now by statute, requiring the assessment of these properties based upon their earnings. Of course, there is no statute in this State requiring that you shall fix the value of this property, based upon what it will earn, but we have submitted and suggested that that is the fairest and most reasonable method of arriving at its value.

Now, in getting at the cost value, which we have set forth there is \$854,000 and odd—I don't state it accurately—we have figured in the actual money cost of the entire property with, of course, the depreciation which has been [128] charged against it since its construction—which, of course, is allowed in all cases—to determine its value, based upon its earning capacity; we have taken the years 1909 and 1910, the two best years we have ever had, and have taken the average earnings for these two years. Of course, our business, like any other business, one year it is better than another; a mine or two shuts down in the Coeur d'Alene Country and the earnings are very greatly depreciated. We have taken the average for those two years. We have then capitalized that at ten times what the average earning was for each of those year; we have then deducted from it the amount at which these low lands have been assessed, the overflowed lands; at which the pole lines have

been assessed at which certain land between the Lake Coeur d'Alene and Post Falls have been assessed; some small buildings at Post Falls that were assessed at \$3,000 by Mr. Wannacott; the right of way of the pole line, assessed at \$4,800, and the assessed valuation of our property in Shoshone County which was \$135,000. Mr. McCalla testified to those figures—that all is a part of the plant.

Now, we are not protesting or objecting to the assessment upon those various items, and we are deducting that from the total value, based upon the earning capacity, and that gives you the sum which we have turned in here as the actual cash value based upon the earnings.

Now, Mr. Wernette, we have called attention to the fact that we think the entire plant should be assessed together, and that all of that land should be assessed together. It is difficult to distinguish between the value of those respective tracts of contiguous land, because they all constitute [129] together the one body of land surrounding the Water Power and connected with it, but as they have been assessed separately, and the dams and machinery and buildings assessed separately, we have done the best we could to distribute it, and we have put in the actual cost of the dams and fixtures, the actual cost of the power plant buildings, and all buildings there, and the actual cost of all machinery and have left the balance of the tract \$97,986. It is an arbitrary classification, because it is pretty difficult to distinguish between the value of one and the other but that is the only way that we could reasonably get at it.

There is one other matter that I call your attention to, and that is that we cannot follow Mr. Wonnacott in distinguishing between the various dams there, because we have carried that to the construction of the plant as one item, the construction of all of the dams, and it would be a pure estimate to say how much one dam cost and how much the other cost, because it was carried as one item, and everything that went into the construction of the dams was carried and is carried as one item; we can give the cost of all of them together, but to separate them would be purely an engineering estimate.

Now, with reference to this railroad spur and bridge down there, we call your attention to the fact that that was put in at the time the plant was constructed to haul machinery and material over there. It has not been used since; and abandoned spur, and the rails belong to the Northern Pacific; they are just simply leased to us or loaned to us to put down there and run that spur over. The bridge itself originally cost \$5,000, and it has not any [130] value now, except such value as might be attached to a place to walk across. Nothing has been done to it recently to keep it in order, and the Northern Pacific has been requested to remove the rails. The value of those rails is just the value of old steel; they are old rails; 65 or 56 pound rails; something like that; they are small rails, and all they are valuable for is as old steel, or for what you could buy similar rails for, which we allege is not in excess of the sum of \$2,500.

Now, the one item of that building on the reservation, that was a small wooden shack that happened to

be over here when the pole line ran across the Indian Reservation, up at the other end of this lake, and it is not used by us now, and has not been, and are trying to get rid of it; it is not worth anything, except pulling the boards down and carrying it away.

Now, I think I have stated to you generally what our claims are in that respect, and if you will inquire of Mr. McCalla.

C. S. McCALLA, having heretofore been sworn by the Chairman, was examined as follows:

(By Mr. WERNETTE.)

Q. What position do you hold in the company, Mr. McCalla? A. General manager.

Q. Did you have charge of the construction work of putting in the dam at Post Falls? A. Yes, sir.

Q. There are three separate channels there that dams have been up in, are there not?

A. Yes. [131]

Q. And then there is what is known as the building proper, the power-house there? A. Yes, sir.

Q. Now, what was the actual cost of construction of the dam on the north side, where the bear trap is at the present time?

A. I could not give you that, because we did not carry the cost of it in that way.

Q. You did not carry it in that way?

A. No. The dams as a whole are considered together. The mere fact that the river being divided into three channels would not be of any value to us to know what one cost, what the other cost.

Q. In other words, you figured the cost of placing the dams in the three channels? A. Yes, sir.

Q. All together? A. Yes, sir.

Q. Well, what was the actual cost of constructing the three dams in the three channels?

A. The value of the dams, taken from their actual cost is \$331,626, that is the present value, based on their actual cost.

Q. That is the present value? A. Yes, sir.

Q. Was that the cost?

Mr. GRAY.—Let him explain it.

Mr. WERNETTE.—All right.

Mr. GRAY.—When Mr. McCalla speaks of the present value, we are speaking as of the 2nd Monday in January, the figures are. [132]

Mr. WERNETTE.—I understand that.

The WITNESS.—The figures which you asked me for I have not, but the figures which I have just given you are from those figures, based on a four years' valuation, figured on three per cent depreciation per annum, which is a very conservative estimate. So you can get that by figuring it back.

Mr. WERNETTE.—Q. How many years do you figure back—to 1907?

A. That is taken for four year. The dam was completed in 1906.

Q. What was that value; give the figures?

A. \$331,626.

Q. And what was the actual cost of putting in the power house?

A. Taking the same basis of figuring, \$100,205.

Mr. GRAY.—Pardon me, Mr. Wernette, I think we will save some trouble if I correct you as you go along. That item is also carried, in addition to the

power-house, we have a transformer house connected with it.

The WITNESS.—That is one building, yes, power station.

Mr. WERNETTE.—Was the figure that you gave there just the power-house, or the power-house including the transformer?

A. What we call the power-house is the entire plant.

Q. The entire plant? A. Yes, sir.

Mr. HEITMAN.—Q. What was that amount, Mr. McCalla? A. \$100,205.

Mr. WERNETTE.—Q. That is the value the second Monday in January, 1911, was it Mr. McCalla? [133] A. Yes, sir.

Q. And then, of course, the actual cost at the time when it was constructed would be more; you are figuring a certain amount of depreciation every year?

A. Yes, taking the depreciation every year for four years.

Q. At what percentage?

A. At three per cent in the buildings.

Q. Now, how many units or wheels have you there?

A. There are five.

Q. Five wheels? A. Yes, sir.

Q. And what capacity have those wheels?

A. Twenty-two hundred fifty kilowatts each.

Q. How many horse-power would that be, Mr. McCalla? A. An average of 3,000 horse-power.

Q. For each unit, each wheel. So the total would be 15,000 horse-power, would it?

A. Yes, approximately.

Q. Approximately 15,000. Now, are you capable of furnishing that number of horse-power the year around under the present conditions with the water and the provisions you have for storing the water in Lake Coeur d'Alene? A. No, sir.

Q. You are not? A. No, sir.

Q. How many horse-power are you capable of furnishing on an average, Mr. McCalla, with the water as it existed during the years 1909, 1910 and 1911, up to the present time, say?

A. Well, with the average low water, we can furnish about 11,900. [134]

Q. Have you ever been able to furnish 15,000?

A. Oh, yes, we can furnish any quantity in high water, for a month or so.

Q. But that only lasts about a month or so, you say? A. Yes, sir.

Q. And how about the balance of the year?

A. Of course, what you can furnish depends entirely on the minimum in low-water season; we could not contract to furnish a man with power for but one or two months.

Comr. FLEMMING.—Are you figuring on horse-power now?

The WITNESS.—Yes, sir; figuring on horse-power.

Mr. WERNETTE.—*I not* figuring on kilowatts.

Q. Then how many horse-power are you safe in contracting for, Mr. McCalla, the year around?

A. Well, we are safe in contracting 11,900.

Q. What is an average price, Mr. McCalla, that

you receive per horse-power for the power that you are furnishing?

A. An average price per horse-power, well, I don't know as I could give you that in figures; we don't figure it that way. We get, delivered in the Coeur d'Alenes, about \$30 a horse-power for which we sell it on the basis of kilowatt hours.

Q. About how many horse-power do you furnish to the Coeur d'Alenes; taking into consideration the amounts you have been furnishing in the years 1910 and 1909?

A. In kilowatt hours, I think I can give you that; I don't know that I could give you it offhand in horse-power.

Q. Give it in kilowatt hours then. A person can figure it out. It is just a matter of mathematics.
[135]

A. Yes, sir. (Referring to memo.) We furnished about 39,000,000 kilowatt hours in the year 1910.

Q. 39,000,000? A. Yes, sir.

Q. To the Coeur d'Alenes? A. Yes, sir.

Mr. GRAY.—Q. How about the year 1909?

A. 1909, about 33,000,000. That is the total furnished in Idaho.

Q. What is that?

A. That is the total furnished in Idaho.

Mr. WERNETTE.—Q. That is not the amount then that was furnished to the Coeur d'Alenes?

A. No.

Q. Have you that Mr. McCalla?

A. We furnished to Shoshone County—which is practically the Coeur d'Alenes,—about 24,000,000.

Q. Kilowatt hours?

A. Kilowatt hours, yes, sir.

Q. That includes then various towns that you furnished power to? A. Yes, sir.

Q. And also the mines?

A. That includes all the power furnished in Shoshone County.

Q. Now, how much power have you been furnishing to various companies and persons in Kootenai County during the year 1909?

A. Kootenai County we furnished the difference there between the amount furnished in Shoshone County and the total figures which I gave you, 33,000,000 and 24,000,000.

Mr. GRAY.—9,000,000? [136]

A. Yes, sir.

Mr. WERNETTE.—Q. 9,000,000 kilowatt hours?

A. Of course, to that 24,000,000 should be added the loss; that 24,000,000 in Shoshone County is measured at the consumer, and then there is the loss, which runs about ten per cent, **loss in transmission**, it figures about ten per cent; that amounts to about nearly 2,500,000.

Q. I will also ask you how much power did you furnish to parties and companies in Kootenai County, during the year 1910, if you have that there, Mr. McCalla?

A. Do you want it in total?

Q. Well, the total amount.

Mr. GRAY.—Just the total.

A. I have the total; it gives it here as about eight million.

Mr. WERNETTE.—Q. 8,000,000 kilowatt hours?

A. 8,000,000 kilowatt hours.

Q. Do you furnish any power from the plant at Post Falls to any persons or corporations outside of Shoshone and Kootenai Counties?

A. Well, the differences between the total generated and that sold there, we send into Spokane or other places.

Q. How much is that, about how much?

A. In 1910 we delivered at Spokane about 16,000,000; in 1909 about 11,000,000.

Q. How much have you been getting per kilowatt hour, or horse power, whichever way you figure it, for the power that you furnish in Kootenai County, Mr. McCalla?

A. I think I have that. (Examining paper.) I have not [137] got it in quite that form here; I have got the revenue in Idaho.

Q. Of the whole state? A. Yes, sir.

Q. That is, the power that you furnished in the state? A. Yes, sir.

Q. How much is that, Mr. McCalla?

A. Well, the revenue in Idaho is \$280,371; I can give you that roughly; that is about 0.72 of a cent a kilowatt hour, the revenue derived from the power in Idaho.

Q. How does that compare with the amount of revenue that you got in the year 1910, Mr. McCalla, if you can give us that?

A. 244,588 in 1910.

Q. That is the total amount that you received from the State of Idaho. Now, what amount did

you receive from the power that you furnished in Spokane for 1909, Mr. McCalla?

A. In 1909 we received six-tenths of a cent for each kilowatt hour, for approximately eleven million; sixty-six thousand dollars; six-tenths of a cent is arrived at as being a figure which we sell it at our switchboard there to the Inland Empire Railway System and to the other street railway systems in Spokane.

Q. About \$66,000 for 1909?

A. Yes, sir.

Q. And what was the amount of revenue derived—

Mr. GRAY.—(Interrupting.) What is that?

A. \$66,000 of Washington revenue there on the amount.

Mr. WERNETTE.—Q. On the basis for this plant. How much for 1910?

A. 1910 a little over 12,000,000; \$73,445.

Q. Now, did you furnish any other power besides the power [138] furnished in Washington and Kootenai County and Shoshone County?

A. No, that was the amount for the total output of the plant.

Q. The total output of the plant?

A. Yes, sir.

Q. Now, those amounts that you have been giving here as the amount of revenue derived from the various places you have been delivering power, that was gross, the gross receipts?

A. Gross revenue, yes.

Mr. GRAY.—Hold on. Go ahead. I don't want

to interrupt you. You say gross receipts?

Mr. WERNETTE.—Yes.

Mr. GRAY.—And Mr. McCalla said gross revenue. I thought there might be some difference between them.

Mr. WERNETTE.—Q. Is there any difference Mr. McCalla?

A. None that I know of, from the sale of power. That is the total receipts from the sale of power, from the operation of the plant.

Q. Now, in 1909, what were the net receipts, if you know, Mr. McCalla?

A. Net receipts, net revenue?

Q. Yes, sir.

A. \$113,537.

Q. Now, what did you figure in deducting from the gross receipts, arriving at your \$113,000, Mr. McCalla, the various items if you can give us that?

A. I can't give you the various items, all of them.

Q. Just give some of them, Mr. McCalla, so the stenographers can get them.

A. In 1909 the expenses in connection with operating the [139] plant were \$185,051.

Q. Now, what do you mean by expenses of operating the plant, what does that include, Mr. McCalla?

A. That includes the total operating and maintenance expense of the plant, exclusive of general management.

Q. That is, in hiring men; just the running expenses?

A. Yes, sir; the maintenance; to that we have

added here an item for General Management of a thousand dollars a month; \$12,000 a year; making a total of \$113,537.

Q. I would like to get at that a little more in detail, if I possibly could, in regard, you say, to running expenses and maintenance. Just state what in particular that relates to.

A. That would cover all of the expenses incidental to operating a plant of that character; there are a multitude of details, which I have not got here; I would have to bring up all the books to get them.

Q. Just mention a few; see what your idea of what that is, and that is all I want to get at; if there is a multitude mention several of them at least.

A. There is the labor, maintenance of machinery, maintenance of buildings, oil and waste and such.

Q. Now, how many men did you employ at the plant during 1909 in Post Falls that were there regularly, if you remember, and if you can't remember the exact number of men, about how many?

A. Well, the regular operators, of course; we have ten men I think regular operators; and then we have a good many more additional men there working on maintenance.

Comr. FLEMMING.—I want to ask one question. In estimating the cost of operating the plant, the value that you gave [140] there is a ten per cent loss in transmission. Do you charge that up too?

A. To deliver one hundred kilowatt hours, you have got to generate one hundred ten.

Mr. WERNETTE.—Q. In the cost of operating and *this incidentals*, you don't charge up the ten

per cent loss on that, do you or not?

A. You have got to; you generate one hundred ten; you sell one hundred.

Mr. GRAY.—Q. Do you charge that loss of ten per cent up as a part of your operating expenses?

A. Oh, no.

Comr. FLEMMING.—That is what I was trying to get at.

Mr. GRAY.—Q. You only figured that on the question of revenues on the other side of the sheet?

A. No, that does not enter into the operating expense.

Mr. WERNETTE.—Q. In figuring the cost of maintenance and operating expense, do you include cost of litigation and attorneys' fees and things of that kind, Mr. McCalla?

A. A proportionate part, yes, sir.

Q. A proportionate part?

A. A proportionate part is directly chargeable to the plant; it is a part of the expense, the same as maintenance.

Q. Did you figure in the cost of litigation and attorneys' fees and things of that nature, outside of just what was necessary in connection with the plant there; or also the litigation that was carried on here against the settlers?

A. That would be a capital expenditure; that would not be included in this.

Q. It would not be included in that? [141]

A. No.

Mr. GRAY.—This is not a formal hearing. I think I can assist you. That attorneys' expense

and all comes within the \$1000 a month too.

The WITNESS.—That comes within the general management.

Mr. GRAY.—No charge is made there of \$1,000 to cover anything, law suits or attorney fees, or anything else. In other words, it is not charged, Mr. McCalla, to part of the operating expense that you mentioned? A. No.

Mr. WERNETTE.—Q. That is what I was trying to get at. Now what was your net receipts or revenue in the year 1910, Mr. McCalla?

A. The net revenue in 1910 was \$160,014.69.

Q. And what was the cost of your operating expenses and maintenance fees during that year, if it is not too much trouble to figure that out?

A. I am taking the expense, less management, at \$181,801.31.

Q. That was added to \$12,000?

A. For general management expense.

Q. And the operating expense and maintenance fees were figured the same way as they were in the year 1909, were they, Mr. McCalla?

A. Yes, sir; the same way.

Q. Now, is there anything else that was deducted from net revenues, which would indicate the gross receipts or the net receipts of the plant?

A. No, sir.

By Comr. FLEMMING.—Q. Is the Idaho Department and the Spokane Washington Department under the same management?

A. Yes, sir. [142]

Q. Cover the same cost?

A. Yes, sir; they all come together.

By Mr. WERNETTE.—Q. What else have you been deducting from the net receipts, Mr. McCalla, and then take that certain amount that you get, after deducting such amount or amounts, that you capitalize at ten per cent in getting at your cash value? A. There is nothing else.

Q. There is nothing else? A. No.

Q. Now you say in 1909, if I remember correctly, about \$113,000 net? A. That is correct, \$113,537.

Q. Which capitalized at a certain amount, at ten per cent, would be how much?

A. We took the 1909 and 1910 and averaged it.

Q. How much would the revenue then in 1910 and 1909 amount to, adding the two together, the net revenue?

A. The average of the two years would be \$136,775.84; that is the average of the \$113,537 and \$160,014.69.

Q. That capitalized at ten per cent would be what amount? A. \$1,367,758.40.

Q. Now, what else have you subtracted from that amount when you arrived at the cash value, in placing it at eight hundred and some odd thousand dollars?

A. That figure deducted the valuations of the property in Shoshone County of \$135,000.

Mr. GRAY.—State why you deducted the value of the property in Shoshone County.

The WITNESS.—Because the earnings, this net revenue on [143] which this capitalization is

based covers the investment and the business in Shoshone County and in other parts of Kootenai County, exclusive of this property. So, therefore, from the total gross capitalization we have deducted the capitalization necessary to conduct that business in the other places.

Mr. GRAY.—May I ask one more question? Q. What did you say Shoshone was? A. \$135,000.

Q. Where did you get the figures for that?

A. That is the assessment, one hundred per cent valuation.

Q. They are assessing there at one hundred per cent, are they? A. I am told they are.

Mr. GRAY.—I wanted to make it clear as we went along. Go ahead with the other items.

Comr. FLEMMING.—Q. Are you filing an application for reduction of taxes in Shoshone County?

Mr. GRAY.—No, sir.

Mr. WERNETTE.—Q. Is there anything else that you deducted from the net receipts?

Mr. GRAY.—You mean from the capital?

Mr. WERNETTE.—From the capital.

A. The values in Kootenai County of the pole lines are deducted.

Q. How much is that? A. \$183,000.

Mr. GRAY.—I will explain that. That would be \$1,850, Mr. Wonnacott, assessed against it, but we cut the \$2,000 off because it was an error.

Mr. WERNETTE.—I understand that. That has been assessed [144] at that amount, has it, \$183,000?

A. \$183,000, yes, sir, plus the \$2,000 taken off.

Mr. WERNETTE.—Q. What else?

A. The right of way, \$4,800.

Q. For the pole line, you mean? A. Yes, sir.

Mr. GRAY.—Q. The assessed valuation in this county of that right of way?

A. Yes, sir; what I call the river lots; there is some land up the river from Post Falls that is referred to in the petition, \$21,905.

Mr. WERNETTE.—Q. You mean the lands that you have purchased there or obtained easements for overflow purposes?

A. No, this land we own outright.

Q. Oh, you own it outright?

A. Yes, sir; and \$180,000 covering the overflowed property along the lake and river.

Q. One hundred and how much? A. \$180,000.

Mr. GRAY.—I will say I am not absolutely sure that we have got the exact figure on that. Mr. Wonnacott told us the amount he was going to assess it per acre, and we multiplied it by the number of acres. So it may be there is some little discrepancy between the \$180,000 and the actual figures, as he added it up himself, but we multiplied it by so many dollars per acre, that he said that he would assess that at; that is a total deduction of \$524,705.

Mr. WERNETTE.—Q. You understand then that you are assessed on the overflowed property on the lakes and the rivers at about \$180,000?

A. Yes, sir. [145]

Q. How much did you say the deductions were then, Mr. McCalla? A. 524,705.

Q. And that subtracted from the net amount,

would leave how much? A. \$843,053.40.

Q. Are you getting the same price for all the power that you furnish in the various places in the Coeur d'Alenes?

A. For the same class of service, we are getting the same price, yes, sir.

Q. Is not the ordinary customary price per horse-power about \$50? A. No, sir, thirty dollars.

Q. Thirty dollars? A. Yes, sir.

Q. Are you receiving more than \$30 from any corporation or any persons in the Coeur d'Alenes?

A. Yes; for instance, those customers who—a man pays \$30 a horse-power—which, by the way, is not \$30 per year; figured by the year; it is figured considerably less, but it is taken on an average of his monthly accounts, monthly consumption. For each dollar of revenue he is entitled then to 130 kilowatt hours. That means, in other words, that is what is technically known as his load factor is sixty per cent, and he pays an equivalent rate of thirty dollars per horse power a year. A load factor is the ratio of his average load to his maximum load, and that covers very largely the majority of the properties. For instance, figured on a twenty-four hour basis. That means a man has got to use his power sixty per cent of that time equal to the maximum capacity; has got to use the maximum load sixty per cent of the time. If he should use it greater than [146] that—which means, if he used it in excess of 130 kilowatt hours per dollar of revenue, he pays for the excess at the rate of one and one-eighth cents per kilowatt hour, 1.12, a little less than 1.1—8 cents. If he used

his peak load one hundred per cent of the time on the maximum, he would pay an average of fifty dollars, and then pays on his twelve monthly peaks, which averages a good deal lower, than his yearly peak, which we would have to furnish.

Q. It would be \$50 if he consumed the entire amount?

A. If he used his maximum every second of the year, he would pay fifty dollars; of course, that is an impossibility; none of them do that; they could not do that.

Q. There are some that pay more than \$30 per horse-power? A. Yes.

Q. What would you say was the average, Mr. McCalla, in the Coeur d'Alenes, for instance?

A. Well, that pays on the average monthly peaks, of course; that would be just giving a guess; I would say it would be about \$35, possibly a little less.

Q. It would be about \$35? A. Yes, sir.

Q. There are some companies up there that pay nearly \$50 up there, are there not?

A. Very few; I don't know of any that pay \$50.

Q. The way you have figured it here, though, as to the amount that you have received, have you been figuring the actual amount that you have received, or just the average that you would say that you would receive?

A. No, the figures that I gave you are the actual gross receipts. [147]

Q. The actual gross receipts?

A. Yes, sir, the actual revenue.

Q. The actual cash paid in?

A. No, it is the actual earnings; that does not take account of any bad debts. Of course, those are bound to happen in all communities, especially in a mining community.

Mr. GRAY.—That is the point I wanted to get at.

Mr. WERNETTE.—Q. Do you subtract, then, the bad debts from the gross receipts to get down to your net?

A. No; the earnings I have given you are the gross receipts as taken from the earning sheet.

Mr. GRAY.—Q. Whether collected or uncollected?

A. Whether collected or uncollected. We have each year to write off a certain amount of bad debts.

Mr. WERNETTE.—Q. Do you subtract the bad debts in getting down your net receipts?

A. No, they are not subtracted in the figures given you.

Mr. GRAY.—They are actually deducted, they should be deducted from your earnings, but in these figures they have not been.

A. They should be, but have not been.

Chairman MEYERS.—Q. What if every merchant and every business man in this town came in and showed us that he was not making ten per cent on the money that he had invested, we would have to be governed by that all the way through?

Mr. GRAY.—No, sir, but, Mr. Meyers, I think if you will permit me I can answer that better by reading to you something that the Public Service Commission of Wisconsin—which undoubtedly is one of the greatest known to the land, [148] it is very

short, and they explain that so well that I think it would not perhaps be a bad plan to call your attention to it. They can give the reason in so much better language—and these are men who are looking at it from a purely fair standpoint. (Reads extensively.)

Chairman MEYERS.—Q. How long has that plant down there lain idle at any one time from the time it started?

Mr. GRAY.—It has not lain idle at all.

The WITNESS.—A part of the machinery has been idle a large part of the time.

Mr. GRAY.—There is a time when we are generating more power than the consumers take, and when we have to have that power there for them, because we never know what moment they will be calling for it and demanding it at the same time. In other words, there are certain times in the day when the power is pulled on more and more power is taken out than at other times; and then the thing that Mr. McCalla called your attention to, in connection with the load factor, a man who uses power continuously during twenty-four hours, you can afford to sell it at a better price, considering the amount that he actually uses, than the man who only uses it for eight hours. You may fix the price per horse-power the same, but the man who buys the horse-power and uses it only eight hours, of course does not get as many kilowatt hours as the man who uses it twenty-four, but you have got to have it there to deliver it to him.

Now, the Public Service Commission of Wisconsin—I am not going to burden you with reading it,

but I will furnish you with the opinion, if you like. They say that the reasonable rule in fixing the valuation upon the property of public service corporations is that, that you should consider the [149] place where the plant is situated and what the ordinary value of money is there (in securities, such as mortgages and things of that kind), and then for the hazard of the business he should be entitled to from one and a half to two and one-half per cent in addition to what he could get if he loaned his money upon a mortgage, because a mortgage is something where there is no hazard, where properly loaned. I simply call your attention to that to show you the reasons that have been advanced and adopted (and which undoubtedly will be allowed here some day) which fixes the valuation of a property such as this upon its earnings. It could not apply to the merchant, for this reason, Mr. Myers: Suppose the merchant has a stock of merchandise, of three or four thousand dollars, and then turns it over three or four times a year, you could not assess him at the twelve or sixteen thousand dollars. I just call your attention to that; that is the reason of that rule.

By Mr. WERNETTE.—Q. Now, can you give us the approximate—you say you can't give us the exact—cost of putting in the several dams there. Can you give us the approximate cost of putting in the dam in the north channel?

A. No, sir; I could not give you that from memory, because it is simply a wild guess.

Q. Well, you know what the cost of putting in all three are? A. Yes, sir.

Q. And you say you were Superintendent there at the time when the dams were put in; you have some sort of an idea?

A. I would not want to venture a guess on that; that would be simply a wild guess and of no particular value. That is [150] five years ago; I would not attempt to carry all of those things in my head.

Q. Could you, by looking at your books?

A. I can go back over the same records, yes, and give you it approximately.

Q. Do you know how much you paid out in the way of making excavations there for blasting?

A. No, sir; I could not tell you.

Q. Could you find that out by looking over your books?

A. No, I don't think we kept those records in quite that shape.

Q. You don't know, then? A. No, sir.

Q. There is no way of getting at it, as to what the cost of excavation was?

A. Only by approximating it; no way of actually getting at it.

Q. The only thing you fix it by then was just to get the entire cost? A. Yes, sir.

Q. And it was not separated out into the various amounts? A. No, sir.

Q. Can you give us the cost of the machinery in the plant at Post Falls?

A. Yes, in the same way that I gave you the others. The machinery is \$313,236.

Q. Now, what does that include?

Mr. GRAY.—Wait a minute. That was on the

second Monday of January? A. Yes, sir. [151]

Mr. WERNETTE.—Q. And what depreciation did you figure?

A. That is figured on the machinery at five per cent for four years.

By Mr. GRAY.—Q. Do you consider that a very low rate?

A. I think that was a very conservative figure on the machinery; it is a low figure. The depreciation there, especially in electrical hydraulic machinery, takes into account the matter of the machinery becoming obsolete; obsolescence is a part of depreciation, and that obsolescence will be on machinery, in an industry which is progressing the way the electrical industry is, very great. In other words, we have thrown out apparatus which was in first class operating condition simply from the fact it was obsolete, we could not afford to operate it; it has to be thrown away, and the expense of that was just as much as though the thing had worn out or burned out. I think that is a low figure.

Mr. WERNETTE.—Q. That was thrown out, Mr. McCalla, wasn't it? Replaced by other machinery which was better than the original which was put in?

A. There would be just the same amount of money necessary to spend on it, whether it was burned up in smoke or dropped into the river; that is the general way it is considered by all of the state commissioners that have charge of such matters; it is a well established rule.

Q. What is that railroad being used for now down there, Mr. McCalla?

A. For nothing, sir; the railroad was built—

Q. (Interrupting.) It is a private road, is it not; that is a private spur that was put in there by The Washington Water Power Company? [152]

A. The railroad was built for one object, and one only, and that is for transporting the machinery to the building. The rails and the steel, all of the steel and fastenings are the property of the Northern Pacific Railroad Company, and they have recently asked us to repair that spur, that they would not operate over it, and we have declined to do it, for the reason that we have no further use for it, and they said they would take out the spur, and we have advised them in writing to go ahead with it. We are unwilling to spend any money on that spur, for the reason that we have no further use for it.

Q. The road was used mostly in getting the machinery in there, was it not? A. Yes, sir.

Q. That machinery in there becomes obsolete quite rapidly does it not? A. Yes, sir.

Q. And it is almost necessary that you have a railroad spur in there to move the machinery in there whenever you do want to take the machinery in, is not that true?

A. No, if brought in there a piece at a time it would be much cheaper to haul it by teams on the road.

Q. There is some machinery in there that you can't haul with teams, or it is next to impossible to haul it with teams, is there not?

A. In our Little Falls plant we hauled every piece of machinery, in fact everything that went in it by

wagon road fifteen miles.

Q. The same sort of machinery that you have there? A. The same, only much heavier.

Q. It is much more costly to handle it with teams than it [153] is by having railroad facilities so it can be taken there, is it not?

A. Well, if we had figured that way we would have built a railroad to Little Falls; we figured it was cheaper to haul it in by wagon; that was after we had built the Post Falls plant.

Q. How long have you had that railroad in there?

A. That was built in 1906-1905.

Q. Paid taxes on it ever since? A. Yes, sir.

Q. Have you sent in an affidavit to the State Board of Equalization on or before the middle of August, or second Monday in August as to that railroad prior to this time? A. I could not tell you.

Mr. GRAY.—We don't claim that we ever have, Mr. Wernette.

Mr. WERNETTE.—Q. You have always considered it a private property, have you not, Mr. McCalla?

A. The roadbed belongs to us; the steel belongs to the Northern Pacific.

Q. You exercised control of it, did you not?

A. No, the Northern Pacific have used it for shipping ties over it; we did the grading.

Q. If you had said "No" to the Northern Pacific, then they would not have had any right to go over it, is not that true?

A. No, I don't believe it is true.

By Chairman MEYERS.—Q. If any other indi-

vidual wanted to ship over that spur would not they have to get the right from you instead of the Northern Pacific?

A. No, by going on the county road and loading they would not.

Q. Your spur is what I am alluding to. [154]

A. No, I think if they had intended to ship over it they would have shipped.

Q. Suppose I was down there and had some little factory and was on that spur. I would have to get permission from you to set those cars in there to ship them out, would I not?

A. That is a pretty nice legal point; I don't know; I am not much of a lawyer. I don't believe you would, unless you were on our land.

Chairman MEYERS.—I would be trespassing as soon as I got on your right of way, and if the manager came to me and told me to stop I would have to do it.

Mr. GRAY.—We have abandoned it and it has no value to us or anybody else in excess of the amount of the value of the steel; we would be glad to get that money for it.

By Mr. WERNETTE.—Q. Did you furnish a list to the County Assessor this year of property?

A. I think we did.

Mr. GRAY.—I did.

Mr. WERNETTE.—Q. Did you include the railroad spur?

Mr. GRAY.—I would not be suprised if I did.

The WITNESS.—I might say in connection with that, that this matter of that railroad spur was

brought to our attention by demand of Northern Pacific Railway Company finally that repairs be made and that demand occurred in the last month or two, and that called our attention to it, and we decided that we were simply throwing away the money by making any repairs.

Q. You considered then that the railroad is worth nothing at all to you folks?

A. Yes, I don't think it is worth anything. [155]

Q. You had two large cranes constructed, Mr. McCalla, to unload machinery from the cars. What are you going to do with these?

A. Those are used for maintaining the machinery, for making examinations and repairs.

Q. You have them constructed in such a way that they are permanent, are they not?

A. Yes, a part of the power station.

Q. And in such a way that they are constructed for the purpose of taking machinery from the cars, are they not?

A. Or from a wagon. We had the same thing at Little Falls where we pushed the wagon up under the crane and took the machinery up on it.

Q. They were figured up as a part of the cost of the machinery of the plant, were they not, the cranes?

A. Yes, sir.

Q. And would the bear-trap and the gates or the dam be figured in as part of the dam itself, or would you figure that in as part of the machinery?

A. That is a part of the dam.

Q. Part of the dam?

A. Integral part of the dam.

Mr. WONNACOTT.—Q. Do you consider the dam there at the power-house, do you consider that in the cost of construction, or does that go into the cost of that building?

A. The cost of that dam is included in figures I gave this morning as a part of the dams; I will call it whichever way you like, it is regarded as a power station, but it is not so included in our figures.

Q. You figure that as a dam? [156]

A. The power-house sets right on top of that; that is the way we considered that in our accounts.

Q. Do you consider that excavation there in the cost of the dam separate, the excavation as a part of the power station?

A. The excavation is a part of the dam, yes, sir; the excavation for the dam is a part of the dam.

Q. I mean the excavation right where the power-house sets; the power-house sets about fifty feet below; was that part of the dam, or is that part of the buildings?

A. The excavation for the power station would be taken as a part of the power station; that for the dam would be a part of the dam. The dam extends though down, the toe of the dam—

Chairman MYERS.—The heading says, “building and excavation.”

Mr. WONNACOTT.—There was a good deal of excavation done last year along in the river between the power station, and straightening the channel. I included that in part of the assessment there. Do you know what that figured up? That was done since that power-house was built there?

A. Yes, sir.

Q. The straightening of that channel?

A. Yes, sir.

Mr. WONNACOTT.—I put in an estimate there of \$35,000 for work done last year.

The WITNESS.—That was in those figures, I could not tell you now just which, but it is in; that is a parallel case of that to the construction plant. Now, the construction plant is the contractor's equipment, you might say; it is used in construction of the different parts of the development, [157] and would be pro rated. Now, this may be done, the same thing.

Q. The work done in the channel of the river, the improvements made in the river, on both sides?

A. Yes, sir; I know what you mean.

Q. A great deal of rock blasted out there and worked there; they closed down a long while, I forget now, I can't remember the cubic yards or feet I figured up was taken out of there.

The WITNESS.—How did you figure that?

Mr. WONNACOTT.—I made a kind of an estimate of it.

The WITNESS.—Did you take soundings? How did you get the amount?

Mr. WONNACOTT.—Depth?

The WITNESS.—How did you know what the original depth was?

Mr. WONNACOTT.—I made just a rough estimate of it.

The WITNESS.—Did you get under the water?

Mr. WONNACOTT.—No, did not get under the

water. How much of that was done last year, that is included in that proposition?

A. Yes, sir, it is all included, whatever it was; I can't give you the exact amount.

Mr. WONNACOTT.—There was an awful lot of work done there last year?

The WITNESS.—Yes, sir.

Comr. FLEMMING.—In these figures you have given here, the figures of ten per cent returned on the investment, now does that include ten per cent on the amount that you have just stated here, or is it ten per cent on your first and original investment?

A. Ten per cent on the amount stated here.

Mr. GRAY.—As a matter of fact, the plant don't pay anything [158] like ten per cent on the actual investment?

The WITNESS.—No, it does not.

By Mr. WERNETTE.—Q. What was the original cost of the plant down there, buying the land and the falls, do you remember?

A. The land?

Q. When you first got the site down there; you got it from Mr. Post?

A. I think it was about \$69,000.

Q. \$69,000? A. Yes, sir.

Q. That included just the falls and how much land?

A. There was some two hundred seventy acres, as I recall it.

Q. Two hundred seventy acres. Now, how much did you pay Mr. Strathern for the land and the power that he had there, do you remember, Mr. McCalla?

A. We paid Strathern as I recall it for moving his mill; I don't think we paid him anything for the land, although I am not dead sure of that; but it is in that figure; it is included; whatever was paid was in that figure of \$69,000.

Q. That is included in the \$69,000?

A. Yes, sir.

Q. Is it not a fact that Mr. Strathern gets a certain number of horse-power every year?

A. Yes, that is a fact.

Q. And he gets that without paying for it?

A. Yes.

Q. As the original consideration for his right there?

A. Yes, sir; his mill occupied a property which was absolutely necessary for the development in that channel, the [159] north channel, and he had a certain amount of water-power, a certain number of horse-power, and it was necessary for us to get him out of there in order to have sufficient room to make the development.

Q. How many horse-power do you furnish Mr. Strathern that you are not being paid for, that is, figured into the original consideration?

A. My recollection is now it is 187 horse-power. I am not dead sure of those figures, because I don't attempt to carry it in my head.

Q. About that? A. Yes, sir.

Q. Then, Mr. Martin, also had certain rights there that were bought? A. Yes, sir.

Q. Or Mrs. Martin. When did you buy those?

A. We made the same sort of a deal with them

that we made with Strathern. We exchanged them electric power for their other power.

Q. How do you figure that, Mr. McCalla, in getting at the \$69,000, what you are furnishing power every year to those parties?

A. The \$69,000 is the actual cash.

Q. Actual cash? A. Actual money paid.

Q. Are these perpetual rights?

A. Yes, their rights were perpetual. We simply traded electrical for water-power.

Mr. GRAY.—In other words, Mr. Wernette, our claim is that whatever the value of that land was, it was agreed upon between the parties, and that power was turned over to them [160] as the consideration for the land.

Mr. WERNETTE.—Q. Then, as a matter of fact, the site in fact that you have down there cost more than \$69,000?

Mr. GRAY.—Yes, but we are not getting the benefit; the other men are the owners of the power that was agreed upon that land was worth.

By Comr. FLEMMING.—Q. Are they supposed to pay the taxes on that property, or under your contract do you pay the taxes on the property?

A. It is their property.

Q. Their property; no agreement that you should?

A. No.

Mr. GRAY.—I would not want to be sure about that.

Mr. WERNETTE.—The Washington Water Power Company owns the land and the water rights that go with it; the deeds are here; they are right in

there; on that statement there.

The WITNESS.—We own the water-power and they own the electric power.

Mr. WONNACOTT.—You own the land and the water-power that Mr. Strathern had?

A. Yes, sir.

Q. You bought it, it was transferred to you formally; we have to look to you for the taxes on it?

A. On the land; yes, sir.

Q. On the Strathern land?

A. Not on his power.

Q. No, we assessed the property that Strathern sold; I have got it assessed separately to you?

A. Yes, sir.

Mr. GRAY.—The point I make in that connection, take the assessment of that land down there; to separate that small [161] piece and the small grist-mill piece from the Post track, it is *absolute* impossible for any man in the world to do it on any kind of basis that you can justify on any reason. In other words, it is all one piece of land. Now, the Strathern and Martin pieces and the piece that grist-mill was situated on are comparatively very small, that is, compared with the balance of the land, and they are just like a man owned half of a quarter of an acre there; they are necessary to the development, and we think the land should all be assessed as one piece of land. With reference to the Martin and the Strathern property, we have always considered that we paid actually more than that particular land was worth when we agreed in perpetuity to deliver to them approximately 300 horse-power; but it was

like a railroad that has all of its right of way bought except one piece; you have got to pay what the fellow wants.

Mr. WONNACOTT.—The grist-mill you have always separated and turned that in as a separate piece of property.

Mr. GRAY.—The fact that we have turned it in on these lists to the men that fill out the lists, to the Assessor, is not of consequence; I suppose it has not been done scientifically as we ought to have done it. That grist-mill itself, of course, has depreciated and is not of very much value; the land was, however, absolutely necessary to the development of the water-power; that is, there was continual friction between the grist-mill owner and the water-power owner, and these other pieces were purchased at high valuations, as we always maintained, more than the land was worth, but it was necessary, and if it was to be apportioned relatively with the best land, it would not have been worth but a few hundred dollars. [162]

Comr. MEYERS.—I would like to ask a question. In figuring up the kilowatts and horse-power, did you figure that in the original bill, or whom do you look to for the taxes on that power of Strathern and the other?

Mr. GRAY.—We included—of course, I don't pretend to say to whom you must look to, as far as Mr. Strathern and Mr. Martin are concerned. As far as we are concerned, you don't certainly look to us to pay their taxes, unless there is some stipulation in the deed, which I am not informed about.

Mr. McCALLA.—There is no such stipulation.

Mr. GRAY.—But that power that we have figured in there includes both the Strathern and Martin amounts. That was included in with it as showing what the capacity of the plant was.

Chairman MEYERS.—That is what I wanted to know.

Mr. GRAY.—The fact is, we didn't cut out little things like that, and put it down in that way; it amounts to a very small sum, when it comes to figuring earnings; we figured in our revenue the total output of that plant, including the Martin and the Strathern power. So that when you have looked over those figures which Mr. McCalla has given you of the kilowatt hours that are put out there and the value of them, it includes the Strathern and the Martin power. We have simply presented those figures for the purpose of showing the entire output of the plant, and we submit to you that that is the fair way of getting at the value; we are not deducting anything; in fact we are not deducting the bad bills in 1909. I have one bill in my hands of \$11,000, which is absolutely not collectible; it is against a prospecting company up in the Coeur d'Alenes, and they did not make the mine they expected, but we have not taken anything [163] of that kind; we are telling you what the plant itself cost.

Mr. WERNETTE.—Q. Do you know who were the first constructors down there to open up those channels?

A. Bennett and Bieler.

Q. Do you know what their contract called for,

the consideration? A. No, sir.

Q. Could you give us that by looking up the records? A. Yes, sir.

Q. Do you know whether they completed that work? A. They did not.

Q. Who took it up after they quit?

A. The company handled it.

Q. The company handled it itself?

A. Yes, sir.

Q. Will you be willing to send us whatever that consideration was?

A. Yes, sir; part of that consideration was—I think it was a material part too—was by way of settlement to get them out. They fell down on their contract, and yet they were within their technical rights there, and they were falling down so badly that in order to get the plant completed and get it developed before high water, to keep them from knocking us out for a year, we paid them money to get them out; they made more money by the abandonment of their contract than by completing it.

Q. Did they get more than what the contract actually called for then? A. Yes, sir. [164]

Q. How much more?

A. I can't remember; it is five years ago.

Q. Could you furnish that, what they actually did get? A. I could if we have it, glad to.

Mr. GRAY.—Q. In other words, you can figure what they were entitled to under the estimates, and what was paid them in settlement? A. Yes, sir.

Mr. GRAY.—The figures you have given already; you have included all of the total cost, including

everything that was paid out in connection with it?

A. Yes, sir.

By Mr. WONNACOTT.—Q. That figured in what those contractors got? A. Yes, sir.

Mr. GRAY.—Q. That is the only way you carried it on your books, is it not?

A. That is the only way.

Mr. WERNETTE.—Why not take it from your overflowed land?

Mr. GRAY.—We make no objection to that.

Mr. WERNETTE.—The power line?

Mr. GRAY.—We make no objection to that except the twenty-three instead of twenty-five, and on this assessment on the river, we thought the assessment was pretty high, but made no objection to that and to those buildings, that we left in, we made no objection to that; it is only on the plant itself. I put in figuring these overflowed lands, we did not get your exact figures on them, but approximately \$180,000.

Mr. WONNACOTT.—I don't remember.

Mr. GRAY.—You said you were going to assess them \$25 an [165] acre.

Mr. WONNACOTT.—We left out the small fractions of acres.

Comr. FLEMMING.—I move that we adjourn until 2 o'clock *this is* for this hearing.

The Chairman put the motion to vote and declared it carried. [166]

Hearing resumed at 2 o'clock P. M., July 17th, 1911, at the same place.

Present: All the Commissioners, and the same at-

torneys as before, and Assessor Wonnacott.

C. S. McCALLA, examination resumed.

(By Mr. WERNETTE.)

Q. Mr. McCalla, you stated that at the time when you purchased that plant you paid \$69,000 for it—not the plant, but the property, the falls?

A. Yes.

Q. The site. What do you consider that site worth, figuring for instance, you had the site at the present time, with the opportunity of having the power plant there, the same as you have, and the demand for electricity the same as it is?

Mr. GRAY.—May I suggest one thing? Mr. McCalla, of course, did not include within that the horsepower for Martin and the grist-mill.

Mr. WERNETTE.—I understand; I will get at that.

A. I think for the raw power that was a very liberal price for it.

Q. At that time, you say? A. Yes, sir.

Q. Well, what would you consider it worth now?

A. I don't think it has appreciated any.

Q. You don't think it has? A. No.

Q. Do you think it has increased any in value?

A. I say I don't think it has appreciated any.

Q. You think the site as a site has increased in value? [167]

A. I say I don't think it has appreciated any.

Q. You don't think it has? A. No.

Q. In other words, you do not consider the site would be worth more than \$69,000, including the Strathern property and the Martin property?

A. No, I should think that was a reasonable price for it. The value of the raw power is not large; it is not what a good many people think it is; it is a small part of the real cost of the development of the power.

Q. The value of a power site is figured entirely, figured mostly, on the demand for electricity and the opportunity of obtaining coal and things of that nature, is it not?

A. Well, there are a good many items which go to make up the value of a raw power.

Q. Those are some of the principal things, are they not, Mr. McCalla, the fact as to whether or not you are going to have a market for your power?

A. That is one consideration; there are different things—with respect to the ease of development, cheapness of development; there would be its location; another would be the nearness to an important market. For instance, the power in the heart of a big city would be worth a good deal more than power out in some wild mountain country.

Q. Then the cost of coal, the cost of fuel would have to be taken into consideration?

A. The cost of coal, and the cost of other water-power which would be available.

Q. In the same locality?

A. The same locality would affect it.

Q. The demand for electricity has been increasing steadily, [168] has it not, Mr. McCalla?

A. Well, it did for a while; it is not increasing now; it is very little.

Q. But it has been increasing some?

A. Decreased in some quarters; at the present

time business is pretty flat. I think 1910 will be the best year that we will have for some time, for some few years, from the looks of things at the present time.

Q. Are there any good power sites in a locality here that could interfere with the rights of The Washington Water Power Company, that could generate power and sell it, in competition with The Washington Water Power Company, within a distance that would make it practicable, that you know of?

A. Well, the Government reports say that the total amount of power available in this district, this vicinity, that the amount developed is a ridiculously small proportion of the whole; that is the Government report.

Q. Well, by "in this vicinity" you mean right here?

A. I mean taken within the Inland Empire, that is.

Q. Within a radius of how many miles, would you say?

A. I would say 150 miles; within the commercial limits of transmission, in the present state of the art.

Q. By means of the dam at Post Falls you are able to make a reservoir or storage basin of the Coeur d'Alene Lake and St. Joe and St. Maries and Coeur d'Alene River, are you not, by means of your bear-trap dam gates at Post Falls?

A. Together with this \$180,000 worth of land.

Q. Yes, you might put that in too, if you want to;

you are capable of doing that?

A. Well, I don't know whether we are or not.

Q. You have been doing it in the past, have you not? [169]

A. Yes. That depends a good deal on the Government decision of course.

Q. Now, the amount of water that you have in Lake Coeur d'Alene and the rivers that I have just mentioned, to a great extent affects the power plants which you have further down the river, does it not?

Mr. GRAY.—I object to that; that has got nothing to do with these.

Chairman MEYERS.—That is the point we want before this Board; that is what we are figuring on.

Mr. GRAY.—You are not attempting to tax The Water Power over in the State of Washington, are you?

Mr. WERNETTE.—No, not at all; but if this plant is the means of generating thousands and thousands of horse-power in another plant, this plant is worth that much more, is it not?

Mr. GRAY.—No, it is not.

Mr. WERNETTE.—You may not think so; other people might.

The WITNESS.—But such result is purely incidental; it is certainly a benefit. For instance, the city of Spokane derives a benefit from that; that certainly is not taxable to The Washington Water Power Company.

Mr. WERNETTE.—Q. I am not asking you that question; I am asking you whether or not it is not the fact that because you have the gates and the

dams here at Post Falls that you are able to hold water which benefits your plants at Spokane and further down the river?

Mr. GRAY.—I resist any further such inquiry as that, because that is all assessed, every horse-power that we have in the State of Washington is assessed there.

Chairman MEYERS.—Is it not a fact, Mr. Gray, there is [170] no other site in the State of Washington to reservoir this water at to help Spokane out than this?

Mr. GRAY.—They have just as good if not a better one.

Chairman MEYERS.—Down below Spokane?

Mr. GRAY.—Down below Spokane. They could bring the power back there just as well.

Chairman MEYERS.—Maybe you can. I don't know where you would have such a great basin. Where would you find such a great basin as this?

Mr. GRAY.—Another one just as large.

Chairman MEYERS.—It is a good ways from Spokane.

The WITNESS.—Closer to Spokane than this one is.

Mr. GRAY.—The point I wish to impress upon you is this. In Washington they have a Public Service Commission, which fixes the value upon all the water power there, on which it is taxed, and on which the rates are based, and that is the same thing that ultimately will occur here. The proposition of competition in that business absolutely is an immaterial matter; the rates are not going to be based,

and never will again be based on competition in water-power, because the Government and the States are going to control them. I don't think if, as a matter of fact, by the development of this power there is some incidental benefit to other powers down in Washington, that you can tax The Washington Water Power Company up here for them; some of them they owned, and some of them they own now and did not own at the time this dam was constructed, and only one of them they owned at the time this plant was constructed; it was designed solely for the development of that one water-power there, without any reference to any other. [171]

Mr. POTTS.—Don't you consider that would add to the value of this plant as a whole, if it was capable of furnishing more power?

Mr. GRAY.—For taxation purposes, I don't think so. In other words, you can't say The Washington Water Power Company shall make all your profits in Washington, when you tax them on this plant more than it is worth, more than what it will make for you, when you would not make a cent of money in Idaho, and that this incidental benefit that we get is all the profit that we can have.

The WITNESS.—The effect of that is already taken account of in Idaho, in so far as the plant itself is concerned, because if it were not taken in there would have been much less machinery put in, and the valuation would have been that much reduced.

Chairman MEYERS.—I believe Kootenai County would not object to that being taken up, that site,

and moved down until you got as good a reservoir, moved on down below. I believe they would be perfectly satisfied.

The WITNESS.—It would be rather a difficult thing, would it not? We have often wished we could do that, I will tell you that.

Mr. GRAY.—If we had our investment out of the State of Idaho, we would be very glad to do it.

Mr. POTTS.—The reason you cannot move it is the reason that you can't afford to dispense with this basin, this reservoir.

Chairman MEYERS.—That is it.

The WITNESS.—No, it is a physical question.

Mr. HEITMAN.—You cannot move the falls.

[172]

Mr. GRAY.—If that power was to be developed again, it would lay there forever, for a great many years, if it was going to cost as much money as that has already before it would be developed.

The WITNESS.—No doubt about that at all.

Mr. GRAY.—It is not paying a reasonable interest on what it actually cost.

Chairman MEYERS.—I struck Spokane twenty-six years ago, and there are times in the summer there when they did not have half of the plant that you have got today, that you could not hardly produce the electricity, but by making a reservoir here, you are able now to run your Spokane plant all summer.

Mr. GRAY.—We have increased the flow about 500 cubic feet.

The WITNESS.—We did not have a million

dollars in a steam-plant in Spokane then either.

Chairman MEYERS.—No, I came there twenty-six years ago, and I know there are times in the summer that water went very low in Spokane.

Mr. GRAY.—That is during some summers, and some summers it don't get so low.

Chairman MEYERS.—No, I am speaking generally.

Mr. GRAY.—The power of the river in Spokane is not increased—well, Mr. McCalla will tell you; it is not increased a quarter. The point I make is this, gentleman, that you cannot say, now that dam that is down there, that there is more water flowing down the Spokane River, and therefore for every foot of water additional that flows down there in the summer time we are going to tax you. [173] You can tax that land to what it is worth; you can tax this overflowed land for what it is worth, and you can tax that plant for what it is worth, but it would not be held for a minute, if there was a public service commissioned in this State, that powers *the* already owned or that they might acquire in the future in Washington—the taxes on which are absolutely controlled by the earnings—is to be taken into consideration, and those earnings reduced in Idaho, because they have that power in Washington.

Mr. POTTS.—The only point is this, that any benefit which this plant affords to you probably in the State of Washington or elsewhere adds to the value of your property here in Idaho. It is an item to be considered in determining its value.

The WITNESS.—It does not affect the cost of the earnings.

Mr. POTTS.—It affects its value.

Chairman MEYERS.—It affects its value; that is what we are assessing on.

Mr. GRAY.—It does not affect the value of the water-power in Washington; we are permitted to earn so much on what the thing cost us, and we are taxed on what they are worth.

Chairman MEYERS.—Is it not a fact if Washington did not have that down there, that you would not need to have quite so much of a lake up here?

Mr. GRAY.—No; inquire of Mr. McCalla concerning that, and he will tell you they never considered a single power in Washington in the construction of this plant; gave no thought to it, and it was not a factor that had anything [174] to do with it.

The WITNESS.—We did not have any other outside of that plant in Spokane.

Mr. WERNETTE.—Suppose for the sake of the argument, conceding that to be true, is it not a fact that because you have this reservoir here and can gauge your water as you want it, that it increases the value of your plant, because you have another plant below?

Mr. GRAY.—No, not the value to us; the value of our investment is based solely on what we can make, and if we are permitted to make a reasonable return on our money, that is all we ask over here or in Washington; we don't want anything more than a fair return upon it, but we are entitled to that.

Chairman MEYERS.—You don't pretend to say that that plant is not larger now than it was twenty-six years ago?

Mr. GRAY.—The Spokane plant?

Chairman MEYERS.—Yes.

Mr. GRAY.—I presume it is; I don't know.

Chairman MEYERS.—At that time they said their water was low. I had lights here in the building, and we wanted to know why the lights were so low; they said they did not have power enough.

The WITNESS.—That would depend on the amount of your load.

Mr. GRAY.—Q. Equipment and machinery?

A. Yes, sir.

Mr. GRAY.—Electric lighting has advanced in twenty-six years. [175]

The WITNESS.—Twenty years ago there was no electric light practically in Spokane.

Mr. GRAY.—Assuming our property in Washington is worth so much money, they say to us there: You can make seven or eight or nine or ten or whatever per cent the law will permit you, you shall make such a per cent upon your investment; for taxation purposes it shall be fixed at the same value it is for rate-making purposes, and your taxes are taken off your income, as one of the fixed charges of the business. Now, then, just assuming for illustration that we made one hundred thousand dollars under such rules and regulations as that, if you gentlemen up here in Idaho are going to attempt to tax it also, because of the fact that we are able to generate power down there, based upon the same

rate-making schedules and same taxed schedules, we cannot make as big a per cent, or the same return on capital; we can't pay the same return that a public service commission says is fair on our capital here; and it simply means that the only other way that you could do would be to raise the rates and charge more over here than we do there.

Chairman MEYERS.—I have one house here in town that has been rented steadily for two years; the last four months there has been no one in it, but my taxes are higher this year than last. Is that right, for me to come before this board and say that because I have not rented that house for four months, that I ought not to pay the tax this year that I did last year? [176]

Mr. GRAY.—Of course not.

Chairman MEYERS.—Your argument to start out is that you want to make ten per cent on the money invested.

Mr. GRAY.—No, we did not say that.

Chairman MEYERS.—That is what you said right here, that you only asked to make about ten per cent on the investment.

Mr. GRAY.—That I do say now. I didn't understand your other question. We only want a fair return, that is all. Now, if we are permitted to make that return, I don't think any of you gentlemen would put your money into it if you were not going to get that or more; you would not go and buy stock in it if you were not going to make more than that.

Mr. WERNETTE.—I don't know about that; I

don't agree with you there.

Mr. GRAY.—I will give you an instance. There is not a railroad running in this county to-day, unless it is the Great Transcontinental Railroads, that is making a dollar, or that has paid a dividend for a number of years. I happen to have a little stock in one of them, the Washington & Idaho Northern; it has never paid a dividend.

Mr. HEITMAN.—The Inland has not paid a dividend recently?

Mr. GRAY.—The Inland has not paid a dividend for several years. Those are all things that tend to show the value of a piece of property, and we are not going to put that money into enterprises that we are not getting any returns from. [177]

Mr. WERNETTE.—The Inland people are taking all of the money that they have been making and putting it into other roads; they have been making thousands of dollars. What about that?

Mr. GRAY.—I beg your pardon.

Chairman MEYERS.—We are not liable for that, if they have not made a dividend; they would have made a dividend if they had not bought other roads.

The WITNESS.—It is a part of the business.

Mr. GRAY.—It is one of the things that you are getting when you are owning a railroad.

Mr. HEITMAN.—It is one of the risks of the railroad business.

Mr. GRAY.—It is not all a bed of roses.

Chairman MEYERS.—What do you invest money in that you don't run a risk?

Mr. GRAY.—Farm mortgages.

Chairman MEYERS.—That is the only thing, farm mortgages.

Commissioner FLEMMING.—In speaking about the dividends buying railroads, I don't know if it is in point or not. If they confined their stocks to the cost of maintenance and construction and had not watered their stock, the case would be different.

Mr. GRAY.—The Idaho & Washington Northern has no water in it; it is real money.

Mr. HEITMAN.—No water in it.

Mr. GRAY.—But that shows that these things are not easy of solution; it is true that there is a good deal of risk connected with it. As I say, every bit of water [178] power that we have in the State of Washington is taxed at so much, and our rates are based upon the valuation that is placed on it for the same purpose, and we are allowed to make a certain rate, and that is all, and that is all that is going to be here. You can't assess us and cut down our assessments down there or, on the other hand, force a higher valuation here for a power that is in Idaho.

Mr. WERNETTE.—Do you furnish the same amount of power in Spokane as if you would not have the falls here to make the dam, say at Post Falls, to make a storage basin of Coeur d'Alene Lake?

Mr. GRAY.—By the development of that other power.

Mr. WERNETTE.—By the development, but you have not now?

Mr. GRAY.—Undoubtedly adds to the value; it undoubtedly increases somewhat the flow of that

river during the summer time.

Mr. WERNETTE.—This plant, then, is worth that much more, because of the fact that you can control your water and furnish water in Spokane at a bigger flow.

Mr. GRAY.—The Inland Empire Company owns a dam in the Spokane River below Spokane; the flow of the river is increased on this. Are you going to increase their assessment by reason of the construction of this dam up here?

Mr. WERNETTE.—I have not assessed them; if I did I would, I believe.

Mr. GRAY.—I don't know how you would make that stick. Their dam is not here; they don't own this dam at Post Falls.

Chairman MEYERS.—Let me ask another question: Now, after that Post Falls dam, suppose some big irrigating [179] company would come and back that water up there down to what it would naturally flow without that dam, do you claim that you could keep that big power plant running in Spokane?

Mr. GRAY.—I claim we could not prevent a man from owning and diverting the water. We don't own it; we use it there and it runs away, and you, or any of these other gentlemen can go and appropriate it and take it out of the river, and that shows that you are attempting to assess us on something that is running there wild, and that any man can go and locate and own and take it away. We don't own it; it is a benefit for any man who happens to be along that river; he gets it as incidental to this, but as I say—

Chairman MEYERS.—I would be afraid to take it; I would hear a big howl from Spokane, if I did.

Mr. GRAY.—I don't know how anybody there could prevent you from appropriating it.

The WITNESS.—The city is doing it, and other people along the river are doing it.

Mr. GRAY.—We don't own that water.

Mr. HARTMAN.—They pump enough to irrigate their lands, a good many of them.

The WITNESS.—They are pumping out of the river all of the time.

Mr. GRAY.—Upon the same theory you could tax the city of Spokane for the water flow in that river, and tax everybody else.

Mr. WERNETTE.—They haven't any property that could be enhanced here in the State of Idaho.

Mr. GRAY.—They are getting a large benefit, the City of [180] Spokane; they have a pumping plant and station of their own, power plant, I mean; generate their own power.

Mr. WERNETTE.—We could not tax them.

Mr. GRAY.—It shows the absurdity of it, where such an attempt would lead. If you can tax us for the benefit derived in the State of Washington, you can tax anybody else that lives there and uses it.

Mr. HEITMAN.—They tax us in Washington, and you tax us for the same thing up here.

Chairman MEYERS.—We are not trying to tax you for what you sell down in Spokane, but you are trying to get the benefit here; it is not only benefit here in Idaho, but at the same time you are putting in that dam you are benefiting Spokane and increas-

ing the value down there.

Mr. HEITMAN.—Increasing the value down there.

Chairman MEYERS.—Yes, sir.

Mr. HEITMAN.—And they tax us for that increased value.

Chairman MEYERS.—No, they can't tax you on that dam.

Mr. GRAY.—That is what they do.

Mr. WERNETTE.—They would be taxing property they would be entitled to tax in Kootenai County.

Mr. GRAY.—No, you can't do it.

Chairman MEYERS.—That furnishes water to Spokane.

Mr. GRAY.—That *that* we furnish from Post Falls, is included in the output of the Post Falls plant, and we are willing to pay taxes, based upon our earnings on that.

The WITNESS.—That is included in the earnings I gave this morning.

Mr. GRAY.—We rather sell it here in Idaho, if we can find a buyer for it. [181]

Comr. FLEMMING.—Q. In your valuation of this power plant as a whole in Post Falls, did I understand you to say this forenoon that you took the cost which you paid for the overflow of the lands up the lake from that valuation? A. Yes, sir.

Comr. FLEMMING.—That is the way I understand it.

The WITNESS.—To arrive at the value of the plant.

Q. Do you think that is a fair basis for us to get of the value of your property, while you have decreased our revenue up the river by overflowing those lands; those lands are not valuable, in fact, decrease it, the valuation up there, at the same time you have subtracted the valuation from the power plant in Post Falls; is it not a double shoot at the revenue?

Mr. GRAY.—Let me answer that, Mr. Flemming. The amount that we are paying for taxes on these lands I will venture to say to you is upon a valuation seven times greater than those men were ever assessed at prior to the time we became the owner of them. Instead of decreasing your revenues, we have increased them.

The WITNESS.—How much; seven times? It is more than that.

Mr. GRAY.—I suppose it is twenty or thirty times.

Comr. FLEMMING.—The valuation on those lands now?

Mr. GRAY.—Yes, sir.

Mr. WONNACOTT.—They were assessed at six dollars an acre last year.

Mr. GRAY.—I say prior to 1907; I will venture to say those [182] lands were not assessed at three dollars an acre.

Comr. FLEMMING.—Real estate all over the county has increased in value since that time.

Mr. GRAY.—It has not increased so rapidly. I can buy the next building to you here with grounds for less than it cost to build it, and real estate in the last two or three years in Kootenai County has not

increased in value in my judgment.

Comr. FERGUSON.—It increased before that.

Mr. GRAY.—Yes, sir; and the last two years it has decreased.

Mr. FERGUSON.—In the last two years?

Mr. GRAY.—It fluctuates like most everything else, I guess, but you see those lands up there are assessed at twenty-five dollars an acre; we think that is an awfully high price for them.

Comr. FLEMMING.—I don't agree with you; I have been over that land this year, and I don't agree with you on that. I am not contending here, sitting as one of the board, that in this matter I can't agree with you, that twenty-five dollars is a high assessment for that land up there.

Mr. GRAY.—We think it is an awful assessment.

Chairman MEYERS.—I will take eighty acres and pay \$50 cash for eighty acres if you will take the water off of it. My father took a piece of land in Illinois that was like this and drained it, and to-day it is the best piece of land in Illinois.

Mr. GRAY.—There is always the question of drainage.

Chairman MEYERS.—We had a one and a half foot fall in eighty rods. [183]

Mr. GRAY.—We have not got it up there.

Chairman MEYERS.—Take the water from it, and I can get it when that dam is out.

Mr. GRAY.—The value is all over toward the hill.

Chairman MEYERS.—You take it two years ago, on the lake, over by the banks, and it rolls in the lake, right along to the top of the banks.

Mr. GRAY.—We had the best engineers in the country to survey it.

Chairman MEYERS.—They found out it was all right, but they gave you the horse laugh at first.

Mr. GRAY.—You can't drain that for \$250 per acre.

Chairman MEYERS.—Yes, I can.

Mr. HEITMAN.—What was that land worth in early days?

Mr. FERGUSON.—A good deal like this prairie land, that we are selling for \$300 an acre.

Comr. FLEMMING.—When I came here, I could have bought half of the prairie for \$3 an acre.

Mr. GRAY.—We think that is the best thing that has come along. There never was anything that increased the value of land in that county like putting that water on it; it has accumulated in value so rapidly.

Chairman MEYERS.—We had twelve years ago an electric light plant here and water plant.

Mr. GRAY.—I mean this land up the river.

Mr. HEITMAN.—You are getting more right now for that low land than ever before.

Comr. MEYERS.—There is nothing that increased the value of the land like sawmills. [184]

Mr. HEITMAN.—That has helped undoubtedly.

Comr. FLEMMING.—The people did not know what was here; what has increased it, this great value of land, the people didn't know what was here.

Mr. GRAY.—I guess I have been here as long as any of you.

Comr. MEYERS.—I bought a piece of land for \$10

an acre when this land was at its lowest ebb; that land you could not get for that to-day.

Mr. WERNETTE.—Q. Have you answered the question, Mr. McCalla?

A. I have forgotten what the question was.

Q. The question was whether or not, because of the fact that you have a plant in Spokane and all this land here where you can make a storage basin out of the Coeur d'Alene River and St. Maries and St. Joe River, and the Lake Coeur d'Alene, that that increases the value of your plant here?

A. It increases the value of the plant here, to the extent that it increases the minimum flow of the river, and that increase is shown by the amount of machinery which we have installed in the plant; in other words, the amount of machinery was based purely upon that flow.

Q. You would not be able to purchase that amount of power in Spokane, if you had not this plant here at Post Falls whereby you could make a storage basin out of the lakes and rivers, could you?

A. There is a certain incidental benefit; no question about that, [185]

Q. Considerable benefit, is it not?

A. Well, it depends on what you would call considerable.

Q. How many horse-power more can you furnish because of the fact that you can regulate the flow of water at Post Falls, in Spokane?

Mr. GRAY.—Enter my objection to all of this.

Mr. WERNETTE.—All right.

A. Certain parts of the year there is no additional amount.

Q. There would be during high water, that would not be decreased, but during low-water season what is the difference?

A. Well, that quantity is more or less of an indefinite nature; it would depend largely on what the flow of the water was during the low-water season any particular time or any particular year; it varies from year to year.

Q. That would be about an average as near as you can estimate, Mr. McCalla?

A. That would be largely a guess.

Q. Well, make a good guess at it then.

A. I should think it would be two or three thousand, perhaps.

Q. Two or three thousand horse-power?

A. Yes, sir.

Mr. GRAY.—That is on an average, Mr. McCalla?

A. Yes, sir.

Mr. WERNETTE.—Q. Have you any other plants except the Spokane plants that are affected by the regulation of the flow here at Post Falls, Mr. McCalla? [186]

A. Well, there is the plant at the city of Spokane; there is the power site there owned by the paper company above that.

Q. I mean of your own, owned by you?

A. No.

Q. I mean owned and controlled by the Washington Water Power Company?

A. Yes, we have one plant which was not constructed, by the way, until after the completion of the Post Falls plant.

Q. Where is that?

A. That is at a place known as Little Falls.

Q. About what number of horse-power can you furnish more there by reason of the fact that you can regulate the flow of water here at Post Falls?

Mr. GRAY.—That is improper; this was constructed at Post Falls before this one was ever purchased.

A. We never thought of this plant at the time of the development of the Post Falls plant.

Mr. WERNETTE.—They are not basing the value of the Post Falls plant down at Spokane, by any means.

Mr. GRAY.—No, but taxing water power that you develop or might develop there?

Mr. WERNETTE.—No, they are taxing the property, not the water power.

Mr. GRAY.—That is where you are mistaken; they are taxing every horse-power.

Mr. WERNETTE.—Put it whatever way you want it.

Mr. MEYERS.—The way I look at it is this, if it had not been that you had that storage plant here, I don't believe that you would have invested as much money down there as you have. [187]

Mr. WERNETTE.—Q. Now, let us get at this other proposition. You can answer it or don't. You can suit yourselves in regard to it. How about that Little Falls plant, about how many horse-power are you developing there?

A. I don't know what the load on that plant has been. Is that what you mean?

Q. I want to get at it in a general way, to find out what the difference is, because of the fact that you have a storage basin here.

A. The head is the same practically, practically the same as that in Spokane, the power would vary directly with the head; the head being the same, the power would be about the same.

Q. Between two and three thousand or two or three hundred?

A. Two or three thousand; of course, that is assuming that we get all of that water. Now, that is not, of course, the fact; and that is putting too high a figure on that. A lot of that water is being taken out along the river by different concerns, and, of course, we know we don't get it all; we don't know how much we do get of it; nobody else does, I guess.

Comr. FLEMMING.—Q. There is no more water taken by private individuals and irrigating companies than there would be if you did not have this storage basin?

A. Certainly, there is more; there is a possibility of more being taken out.

Mr. WERNETTE.—Q. Here, Mr. McCalla, if it don't take too long or too much trouble, about how much per kilowatt have you produced, earned the cost of construction in putting in the plant at Post Falls. It is not necessary to be [188] figured down to cents, but about how much?

A. I would have to look that up a little bit; I could not give you an off-hand answer.

Q. What, according to engineering statistics, is the cost per kilowatt of putting in a typical plant

similar to the one at Post Falls, about?

A. They vary a good deal, depending on the ease of construction and the natural difficulties to overcome and transportation, etc. Transportation is a very simple matter there.

Q. Do they vary a very great deal?

A. Yes, a very great deal.

Q. About how much would they vary, do you say?

A. I should say two or three hundred per cent.

Q. Two or three hundred per cent?

A. Two or three hundred per cent.

Q. Is it not a fact that the cost per kilowatt according to typical plants, the same as down at Post Falls, is in the neighborhood of \$58 to \$1.65 per kilowatt?

A. I think our cost there was a good deal more than that. You have the figures.

Q. You think the cost was a good deal more at Post Falls than \$58 to \$65 per kilowatt?

A. What do you figure there, on the kilowatts installed?

Q. Yes, sir; kilowatts installed.

A. Or the kilowatt capacity?

Q. Kilowatts installed.

A. For instance, if the plant cost a million dollars and you have eleven thousand nine hundred, say twelve thousand horse-power, it would be a little over \$80 a horse-power. [189]

Q. How much a horse-power?

A. If the low-water flow was eleven thousand nine hundred, and it cost a million dollars, eighty dollars would be nine hundred sixty thousand dollars; it

would be about eighty dollars.

Q. You don't know, then, about how much it would cost unless you did some figuring?

A. The cost, you mean, of the raw power?

Q. Yes, sir.

A. Well, it would cost \$109,000; that is about \$10.

Q. Yes, but I mean for putting in the machinery, to put it so that you could use the power in putting in plants.

A. You have the figures there, \$80 and \$10.

Q. What is the Washington Water Power Company capitalized at, Mr. McCalla?

A. You mean the capital, or the capital and bonds?

Q. Yes.

A. As I recall, about between six and seven millions of stock, and the total capitalization runs about sixteen millions, a little over sixteen millions.

Q. About sixteen million; what part of that is represented here in Kootenai County?

A. There is about a little over a million.

Q. A little over a million?

A. Yes, about a million dollars.

Q. When was it that the last dividend was declared on the stock of the Washington Water Power Company? A. The last quarterly dividend. [190]

Q. How large a dividend was it, what per cent?

A. Two per cent.

Q. And was it two per cent on the capital stock that was represented here?

A. Yes, sir; two per cent on the total capital.

Mr. GRAY.—Q. Two per cent on all of the capital, wasn't it?

Mr. WERNETTE.—Q. Two per cent on all of the capital stock, on sixteen million dollars?

A. No, two per cent on the capital stock, the total capitalization was the stock.

Q. Upon your stock, say sixteen millions?

A. Yes, sir.

Q. What is the capital stock?

A. I have forgotten just what the total amount of capital stock outstanding is at the present time; I think it is about six millions.

Q. Six millions? A. Yes, sir.

Q. And a two per cent quarterly dividend was declared on six millions, or about six millions?

A. Yes, sir.

Q. And how much of that was on the property that is represented here in Kootenai County?

Mr. GRAY.—It is not segregated.

Mr. WERNETTE.—It is not segregated?

Mr. GRAY.—No, there are no segregations.

The WITNESS.—It is one company; we don't handle it by subsidiary corporations; it is not a holding company. All [191] of the water in our company is in the river; the securities are free.

Mr. GRAY.—I think Mr. McCalla misunderstood you; it is all one concern; there is no division of stock.

Mr. WERNETTE.—Q. Only one-sixteenth of the whole plant represented here?

A. Yes, that is just about the proportion exactly. The power station is the smallest part of your investment. For instance, take just as an example, which I happened to look up the other day, our investment

in Spokane for the municipal lighting, for the city street lights, assuming if you will that the power cost \$100 a horse-power, taken from the switch-board, that is \$100 at the switchboard, the rest to furnish the service, in addition to that \$100, there is nearly \$200 more on the power that it costs us, about \$300 delivered *delivered*, that includes the transformers, pole lines, cables, and all of the work incidental to furnishing the service. In other words, the power itself is the smallest part of the expense that goes into it. The cost of the service is the chief cost, it is not the cost of the power. The commissions, in cities where they have commissions, recognize that fact, because it is a fact. It may cost in a paved street in the City of Spokane, where we furnish service, it may cost two or three hundred dollars a horse-power to get from the pole line into a man's property, into his store; most people don't take that into consideration, yet it is a fact, and that is where the big investment is. We have a very large investment down there for the power, which is purely insurance, it don't earn anything; [192] it is purely insurance. The same way with the steam plant, that is purely insurance; it don't earn anything; it is expense.

Q. That is a million dollar plant?

A. Yes, sir; approximately; it cost about nine hundred thousand I think.

(By Mr. HEITMAN.)

Q. That steam plant, does that supplement the water plant when the water is low?

A. That is, in case of deficiency of the water or

troubles of that nature.

Q. Or breakdown?

A. Breakdown; it is purely an insurance feature.

Q. You have a million dollars invested in that?

A. We have about nine hundred thousand dollars invested in that.

Mr. WERNETTE.—Q. Was that two per cent paid on \$6,000,000 or twelve or fifteen million?

A. It was paid on the capital stock which, as I recall is about six million.

Q. Six million?

A. Yes, sir; of course that sixteen millions includes the street railway system and interurban railway system; that is the total property. There is an item of expense in our business which people lose sight of, expense of metering, which runs per horsepower over half as much as that of the station, the amount of money invested in meters.

Mr. WERNETTE.—I think that will be all of the questions I desire to ask.

(By Mr. GRAY.)

Q. You asked Mr. McCalla to get for you the figures that [193] were paid to Bennett and Bieler?

Mr. WERNETTE.—Yes, sir.

Mr. GRAY.—Mr. McCalla has simply telephoned to his office to get them, and we have those here, which we will be glad to furnish.

Mr. WERNETTE.—All right; put those in.

Mr. GRAY.—Q. This was everything that was paid?

A. I have the total here of \$143,216.43.

Q. That was mostly for excavation; that was all they did, was excavating there, did they not, Mr. McCalla?

A. No, they completed the works in the South channel that was completed; it included, a large part—all of the excavation, and a part of the concrete in the middle and in the North Channel.

Q. The depreciation which you gave on each of those items, of building the dams and machinery this morning you regard as conservative?

A. I think they are very conservative.

Q. It is a fact, is it not, that where the Wisconsin public service commission has passed upon depreciation of a telephone company that they have allowed from four to five per cent? A. Yes, sir.

Q. And on an electric company how much?

A. About seven per cent right straight through on machinery.

Q. Was the Post Falls plant constructed or designed with reference to the development of any power other than the power at Post Falls? [194]

A. It was not.

Q. Did you have that under consideration at the time that you constructed it, your power plant at Spokane? A. No, sir.

Q. Or did you appreciate that it would be of any advantage?

A. We never made any plans at all on the power at Spokane.

Q. There was one piece of property there, you gave the cost of that property at \$69,500, and you also spoke of the Martin and Strathern property and of

the grist-mill. What was paid for the grist-mill property?

A. Paid \$40,000 for the grist-mill.

Q. That is what made up that \$109,000?

A. Yes, sir.

Q. Was that one, compared with the other property, worth \$40,000?

A. That was the last piece in the link, and we paid the price to avoid trouble.

Q. Has anything been done with that grist-mill since then?

A. No, sir; it is unsold; we will give it away at a very reasonable figure.

Q. You had to buy it to get the rest of the property?

A. We had to buy it to get the rest of the property.

Mr. GRAY.—I think that is all.

(By Mr. WERNETTE.)

Q. Is it not a fact that you built the plant at Spokane as you did on the strength of the fact here whereby you could make a storage basin out of Coeur d'Alene Lake and the river tributary to the Coeur d'Alene Lake? [195]

A. No, I think that is not a fact. I don't think we have bought any machinery for Spokane plant since the completion of the Post Falls works.

Q. Then you had machinery in there that could handle water as you could produce it, by regulating the water here at Post Falls?

A. Well, in any plant you have got to put in besides the machinery for the actual load on the plant you have got to put in some spare apparatus.

Mr. GRAY.—Q. Was that put in, with any view to any development? A. No, certainly not.

Mr. WERNETTE.—That is all.

Thereupon after some discussion the matter was adjourned to July 25th, 1911, at 10 o'clock A. M.

Filed August 20th, 1912. A. L. Richardson, Clerk.

[196]

Plaintiff's Exhibit No. 18.

1908.

PROPERTY IN KOOTENAI COUNTY.

Post Falls Plant.

Dams.

Depreciation 2%	\$ 6,705.64	
Maintenance		\$ 3,000.00

Buildings.

Depreciation 3%	2,756.77	
Maintenance		2,000.00

Machinery.

Depreciation 5%	20,136.90	
Maintenance		8,030.82

Operation		\$8,631.25
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Taxes.....		10,429.78
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Transmission lines

Depreciation 8%	12,800.00	
Maintenance		8,000.00

\$42,399.31	\$21,030.82	\$19,061.03
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Depreciation, Maintenance, Operation and Taxes...\$82,491.16

[197]

218 *The Washington Water Power Company vs.*

1908.

PROPERTY IN SHOSHONE COUNTY.

10 Substations.			
2 " Buildings.			
Depreciation 5%	\$ 8,000		
Maintenance		\$ 4,000	
Taxes.....			\$ 784.22
Operation.....			3,900
Transmission Lines.			
Depreciation 8%	10,280.80		
Maintenance		6,269	
Taxes.....			580.00
	<hr/>	<hr/>	<hr/>
	\$18,280.80	\$10,269	\$ 5,264.22

Depreciation, Maintenance, Operation and Taxes....\$23,814.02

[198]

1908.

	Kilowatt Hours.
Shoshone County (delivered).....	22,534,397
Line loss 10%	2,253,439
Coeur d'Alene Railway (at switchboard).....	4,776,000
Martin "	246,415
Strathern "	1,106,281
Kootenai Power Co.	1,865
Nor. Idaho & Mont. Power (Percentage in Idaho).....	00
TOTAL AMOUNT CONSUMED IN IDAHO.....	30,918,397
Total output Post Falls Plant.....	40,399,000
Less amount sold in Idaho	30,918,397
Excess at Switchboard	9,480,603
Line loss in sending to Spokane 10%.....	948,060
Delivered at Spokane.....	8,532,543
Loss by conversion 25%.....	2,133,136
NET DELIVERED	6,399,407
6,399,407 K. W. H. at \$0.006 per kilowatt hour.....	\$ 38,396.44
Revenue in Idaho	259,851.73
TOTAL REVENUE	298,248.17
Expense less management	106,305.18
Management	191,942.99
	<hr/>
	21,400.00
NET REVENUE	170,542.99

[199]

Kootenai County and Fred E. Wannacott. 219

1909.

Cost to 2nd Monday in January, 1910.

PROPERTY IN KOOTENAI COUNTY.

Post Falls Plant.

Dams.

Depreciation 2%	\$ 6,705.64	
Maintenance		\$ 3,000.00

Buildings.

Depreciation 3%	2,756.76	
Maintenance		2,000.00

Machinery.

Depreciation 5%	20,136.90	
Maintenance		8,030.82

Operation.....		\$8,756.38
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Taxes.....		27,880.69
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Transmission lines.

Depreciation 8%	12,800.00	
Maintenance		8,000.00

Switching Station.

Depreciation 5%	1,160.00	
Maintenance		1,160.00

	\$43,559.30	\$22,190.82	\$35,637.07
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Depreciation, Maintenance, Operating and Taxes....\$101,387.19

[200]

1909.

PROPERTY IN SHOSHONE COUNTY.

10 Substations.

2 " Buildings.

Depreciation 5%	\$8,000	
Maintenance		\$4,000
Taxes.....		\$784.22
Operation.....		3,900.00

Transmission lines.

Depreciation 8%	13,942.40	
Maintenance		7,806
Taxes.....		1,525.04

	\$21,942.40	\$11,806	\$ 6,209.26
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Depreciation, Maintenance, Taxes and Operation....\$39,957.66

[201]

220 *The Washington Water Power Company vs.*

1909.

	Kilowatt Hours.
Shoshone County (delivered)	24,040,306
Line loss 10%	2,404,030
Coeur d'Alene Railway (at switchboard).....	5,110,000
Martin	247,926
Strathern	1,279,819
Kootenai Power Co.	12,794
Nor. Idaho & Mont. Power (percentage in Idaho).....	
TOTAL AMOUNT CONSUMED IN IDAHO.....	33,094,875
Total Output Post Falls Plant	49,043,000
Less amount sold in Idaho.....	33,094,875
Excess at switchboard	15,948,125
Line loss in sending to Spokane 10%	1,594,812
Delivered at Spokane	14,353,313
Loss by conversion 25%	3,588,328
NET DELIVERED	10,764,985
10,764,985 K. W. H. at \$0.006 per kilowatt hour.....	\$ 64,598.91
Revenue in Idaho	246,532.13
TOTAL REVENUE	311,122.04
Expense less management	141,344.85
	169,777.19
Management	21,400.00
NET REVENUE	\$148,377.19

[202]

1910.

PROPERTY IN KOOTENAI COUNTY.

Post Falls Plant.

Dams.

Depreciation 2%	\$ 6,705.64	
Maintenance		\$ 3,000.

Buildings.

Depreciation 3%	3,524.78	
Maintenance		2,000.

Machinery.

Depreciation 5%	20,249.11	
Maintenance		8,030.82

Operation.....		\$ 8,819.00
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Taxes.....		39,693.42
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Transmission Lines.

Depreciation 8%	14,640.00	
Maintenance		10,300.00

Switching Station.

Depreciation 5%	1,160.00	
Maintenance		1,160.00

\$46,279.53	\$24,490.82	\$48,512.43
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Total Depreciation, Maintenance, Operation and Taxes..\$119,282.77

[203]

1910.

PROPERTY IN SHOSHONE COUNTY.

10 Substations.

3 " Buildings.

Depreciation 5%	\$ 8,125.00		
Maintenance		\$ 4,000.00	
Taxes.....			\$1,500.00
Operation.....			3,953.00

Transmission lines.

Depreciation 8%	14,578.00	8,337.00	1,711.00
	\$22,703.00	\$12,337.00	\$ 7,164.00

Depreciation, Maintenance, Taxes and Operation....\$42,204.

[204]

222 *The Washington Water Power Company vs.*

Revenue for 1910.

	Kilowatt Hours.
Shoshone County (delivered).....	28,409,826
Line loss 10%	2,840,982
Coeur d'Alene Railway (at switchboard).....	6,068,200
Martin "	207,613
Strathern "	1,443,447
Kootenai Power Co.	22,318
Nor. Idaho & Mont. Power (Percentage in Idaho).....	00
TOTAL AMOUNT CONSUMED IN IDAHO.....	38,992,386
Total output Post Falls Plant	57,127,000
Less amount sold in Idaho	38,992,386
Excess at switchboard	18,134,614
Line loss in sending to Spokane 10%	1,813,461
Delivered at Spokane	16,321,153
Loss by conversion 25%	4,080,288
NET DELIVERED	12,240,865
12,240,865 K. W. H. at \$0.006 per kilowatt hour.....	\$ 73,445.00
Revenues in Idaho	283,020.02
TOTAL REVENUE	\$356,465.02
Expense less management	161,486.77
	194,978.25
Management	21,400.00
NET REVENUE	\$173,578.25
[205]	
Net Revenue, 1908.....	\$170,542.99
" " 1909	148,377.19
" " 1910	173,578.25
TOTAL	3/ 492,498.43
Average for 3 years.....	\$164,166.14
[206]	

Kootenai County and Fred E. Wannacott. 223

Capitalized at 10% on average of three years net earnings....\$1,641,661.40
Deduct.

Shoshone County property 2nd Mon-	\$344,725.00	depreciated
day January, 1911.....		value \$265,585
Overflow lands Kootenai County As-	200,000.00	as testified by Won-
sessed		nacott
Pole lines Kootenai County Assessed.	183,000.00	
Substation at Cataldo depreciated	20,880.00	748,605
cost 2nd Monday January, 1911..	<hr/>	<hr/>
VALUE POST FALLS PLANT.		\$893,056.40
Using depreciated value Shoshone County property as \$265,585. property		
in Idaho, except Post Falls Plant is \$669,465. making		
VALUE POST FALLS PLANT.....	\$972,196.40	

224 *The Washington Water Power Company vs.*

POST FALLS PLANT.

Cost less Depreciation on 2nd Monday January, 1911.

From July 1906-4½ years.

Dams—2%.

Year.	Cost.	Depreciation During Period.	Depreciated Cost End of Period.
To July 1, 1906	315,602.93	\$ 3,156.03	
" Jan. " 1907	329,288.69	6,585.77	
" " " 1908	335,152.63	6,703.05	
" " " 1909	335,281.96	6,705.64	
" " " 1910	335,281.96	6,705.64	310,169.00
" " " 1911	340,025.13		
		<hr/>	
		\$29,856.13	

Buildings—3%.

To July 1, 1906	68,557.91	1,028.37	
" Jan. " 1907	87,754.20	2,632.63	
" " " 1908	91,724.93	2,751.75	
" " " 1909	91,892.27	2,756.77	
" " " 1910	117,492.57	3,524.78	130,831.11
" " " 1911	143,525.41		
		<hr/>	
		\$12,694.30	

Machinery—5%.

To July 1, 1906	193,437.90	4,835.95	
" Jan. 1, 1907	254,425.55	12,721.28	
" " " 1908	310,494.32	15,524.72	
" " " 1909	402,737.93	20,136.90	
" " " 1910	404,982.22	20,249.11	
" " " 1911	421,898.91		348,430.95
		<hr/>	
		\$73,467.96	
			<hr/>
			\$789,431.06

Cost of Dams to Jan. 1st, 1911.....\$340,025.13

" " Buildings to Jan. 1st, 1911..... 143,525.41

" " Machinery " " " " 421,898.91

TOTAL\$905,449.45

Depreciated Cost of Dams, Buildings and Machinery,

Jan. 1st, 1911\$789,431.06

Difference between total Cost to Jan. 1st, 1911, and

Depreciated Cost same date of Dams, Buildings

and Machinery\$116,018.39

Kootenai County and Fred E. Wannacott. 225

Depreciated Cost of Dams, Buildings and Machinery,

January 1st, 1911.....	\$789,431.06
Land	109,272.44
	<hr/>
	\$898,703.50
Plant Balance Jan. 1st, 1911.....	\$898,703.50
Add 10% for intangible values.....	89,870.35
	<hr/>
TOTAL	\$988,573.85

Filed August 20, 1912. A. L. Richardson, Clerk. [209]

Plaintiff's Exhibit 21.

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES. School Dist. No.	Special School. Road.	Total Tax.
St. M. Land Co: Unplatted part Lot 2. CDA & St. Joe Trans. Co.:	22	46	2 W	14	300	per acre				
Part of Lot 3. Connolly & Kroetch:	1	47	4 W	1	1500					
Lot 6	1	47	4 W	1	500				Less than 1 acre.	
A. A. Crane: Part Lots 3 & 4	1	47	4 W	1	300				Less than 1 acre.	
J. J. Costello: NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$	18 18 18	50 50 50	3 W 3 W 3 W	40 10 20	200 275 275	per acre per acre per acre				
Maria A. Daley: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	18	50	3 W	20	200	per acre				
C. F. Chapin: Lot 1 5 acres Lot 1	18 19	50 50	3 W 3 W	34 5	242 300	per acre per acre				
Henry Weaver: E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ & NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Less Road & R. of Way	12	50	4	29	155	per acre				
J. C. Cook: 3 of S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	12	50	4	3	400	per acre				

Subdivision.	Sec.	Twp.	R.	Acs.	Value.	State and County.	Road Dist. No.	TAXES. School Dist. No.	Special School.	Special Road.	Total Tax.
L. S. Wing: E. 396 Ft. of W. 330 ft. of W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$	12	50	4	3	200	per acre					
Mrs. J. J. Judd: S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$	12	50	4	5	400	per acre					
M. C. Easley: NE $\frac{1}{4}$ NE $\frac{1}{4}$	11	50	4	40	164	per acre					
NW $\frac{1}{4}$ NE $\frac{1}{4}$	11	50	4	40	164	per acre					
SW $\frac{1}{4}$ NE $\frac{1}{4}$	11	50	4	40	164	per acre					
Nellie Des Voigne: N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$	13	50	4	5	400	per acre					
J. J. O'Brien: 30 A. of NE $\frac{1}{4}$ SE $\frac{1}{4}$	13	50	4	30	350	per acre					
T. T. Kerl: $\frac{1}{4}$ Acre on South End of Govt Lot 45	14	50	4	$\frac{1}{4}$	6480	per acre					
Taylor Bros: 1 $\frac{1}{4}$ on S. End of Lot 5	24	50	4	1- $\frac{1}{4}$	1136	per acre					

[210]

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES. School Dist. No.	Special School.	Special Road.	Total Tax.
M. D. Wright:											
Lot 2	3	51	3 W	9.28	511	per acre					
Rose Caplice:											
N. 5 acres of Lot 1	17	51	3 W	5	200	per acre					
Hayden Lake Imp. Co:											
NE $\frac{1}{4}$ SW $\frac{1}{4}$ Less R. of Way	18	51	3 W	36	167	per acre					
Lot 6	18	51	3 W	22	404	per acre					
John A. Finch:											
10 acres of Lot 1	19	51	3 W	10	200	per acre					
Walter Ogden:											
Lot 7	18	53	4 W	$\frac{1}{2}$	200	per acre					
Thomson, Klappenberg & Broekman:											
N $\frac{1}{2}$ Govt. Lot 20	11	50	4 W	8.	500	per acre					
Dryad Lbr. Co.:											
Lot 8,	11	50	4 W	20.47	300	per acre					
Lot 9,	11	50	4 W	1.47	171	per acre					
Lot 16,	11	50	4 W	14.30	245	per acre					
Lot 22,	11	50	4 W	14.78	300	per acre					
C. K. Leithe:											
East 9 acres Lot 24,	11	50	4 W	9	300	per acre					

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County. per acre	Road Dist. No.	TAXES.		
								School Dist. No.	Special School.	Special Road.
J. Arhart: Lot 11, Dryad Lbr. Co.:	11	50	4 W	3½	250					
Lot 18,	14	50	4 W	4.96	810	per acre				
Lot 46	14	50	4 W	17.71	900	per acre				
Lot 47,	14	50	4 W	21.26	888	per acre				
M. B. Onillan:										
1 acre of Lot 19,	14	50	4 W	1	1200	per acre				
Wm. Dollar:										
Lots 22-23	14	50	4 W	2	1400	per acre				
Unknown:										
Beauty Park comprising 80 acres, being N½ NW¼	6	50	3 W	80	240	per acre				
Unknown:										
Best Lands—being part of S½ SE¼	1	50	4	about 60 acres.	200	per acre				
A. Hansen:										
Lakeside Gardens 16 & 17,				2	250	per acre				
C. H. Gibbs:										
Lakeside Gardens—18-19										
28, 29, 32, 33, 34, 35,										
36, 37, to 52 Inc. 55 to										
69 Inc.				40	175	per acre				
[211]										

[211]

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	TAXES.			
							Road Dist. No.	School Dist. No.	Special School.	Special Road.
C. H. Gibbs, Lot 31 Lake- side Gardens				1	210	per acre				
C. M. Graves:										
Hayden Lake Cottage										
Sites—Lot 1,				6.72	400	per acre				
Lot 9,				1.03	400	per acre				
A. L. White:										
Hayden Lake Cottage										
Sites Lots 2, 7, 8,				7	400	per acre				
Various Owners:										
Hayden Lake Cottage										
Sites—3, 4, 5, 6				4½	400	per acre				
St. Maries Land Co.:										
Rivendale—Lot 8,				1.98	151	per acre				
T. R. Danson:										
Wm. Freeman:										
Rivendale—Lot 31,				8.74	150.12	per acre				
Consumer's Co., Ltd.:										
Lot 2 Assessor's plat 4,				3/10	250	per acre				
Lot 3 " "				1.65	600	per acre				
Taylor Bros:										
Lot 5, Assessor's plat #4				2	250	per acre				

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES.		
								School Dist. No.	Special School.	Special Road.
Drayad Lbr. Co.:										
W. part Lot 2,				21½	240	per acre				
Rivendale--Lot 9,				47/100	160	per acre				
W. 5½ acres Lot 7,										
W. 8½ acres Lot 8,				14	486	per acre				
Assessor's plat #12										
Unknown:										
E 13 A. Lot 2				13	300	per acre				
Assessor's plat #12										
C. M. & P. S. Ry. Co.:										
E. 7 A. Lot 7				7	300	per acre				
Assessor's plat #12										
S. & I. E. Ry. Co.:										
Lot 14 Assessor's plat #12				2.4	1460	per acre				
Lot 16 " #12				3¾	1077	per acre				
Lot 17 " #12				3¼	922	per acre				
S. A. Varnum:										
Lot 5, Assessor's Plat 13				4.17	900	per acre				
[212]										

ASSESSOR'S PLAT #14.

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES. School Dist. No.	Special School.	Special Road.	Total Tax.
M. Ingerlund—Lot 1				5	300	per acre					
Anna Williams, Lot 2				9.6	335	per acre					
Louis Donart, Lot 3				1	420	per acre					
Effie Tomlin, Lot 4				83/100	512	per acre					
M. B. Chase, Lot 6				1	475	per acre					
C. H. Clingam, Lot 7				1	475	per acre					
Spokane Leather Co., Lot 18				1	425	per acre					
Mrs. E. A. Gentry, Lot 19				1	350	per acre					
Spokane Leather Co. Lot 20				1	375	per acre					
Mrs. I. M. Coville, Lots 23 & 24				5	300	per acre					
H. P. Coville Lot 25				5	300	per acre					
E. G. Welch, Lot 26				15.8	316	per acre					
ASSESSOR'S PLAT #17.											
Stewart Est. Lot 3,				10	200	per acre					
Mrs. Martha Decker:											
Part of Lot 4,				3½	243	per acre					
J. M. Morris:											
Part of Lot 5				1½	367	per acre					
John Nordstrum, Lot 8,				2	350	per acre					
H. C. Hugus, Lot 10,				5	180	per acre					
I. E. Ry. Co., Lot 14,				3½	243	per acre					
A. Perreoud, Lot 15,				10	225	per acre					
E. J. Seymour, Lot 16,				2	225	per acre					
Ella M. Reynolds, Lot 17,				5	250	per acre					
Various Owners: Lot 18,				5	300	per acre					
Geo. W. Groves, Lot 19,				5	490	per acre					
H. S. Matthews, Lot 20,				5	220	per acre					

ASSESSOR'S PLAT #18.

TAXES.
School
Dist.
No.

Special
School.
Road.

Total
Tax.

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.
J. Nevatte, Lot 1,				2½	240	per acre
J. G. Patchen, Lot 2,				1½	267	per acre
M. G. Whitney, Lot 3				1¼	400	per acre
Wm. Morgan, Lot 4,				¾	400	per acre

ASSESSOR'S PLAT #19.

N. P. Palmeter, Lot 1,				1	400	per acre
Chas. Ingram, Lot 2,				1	350	per acre
A. H. Bekel, Lot 3,				1	250	per acre
Job Olmstead, Lots 4, 5				2	300	per acre
Thos. Riley, Lot 6				1	300	per acre
Hannah K. Andrew, Lots 7, 8, 9				3	267	per acre
James D. Aoust, Lots 12, 13				2	350	per acre
John H. Stevens, Lots 14, 15				2	400	per acre
Mary B. Hawkins, Lot 16				1	450	per acre
Jack Marshall, Lots 17, 18				2	375	per acre

ASSESSOR'S PLAT #25.

Belle Orr, Lot 1,				1¾	154	per acre
A. J. Patrick, Lot 2,				2	157	per acre
S. K. Meyers, Lot 4,				1½	220	per acre
John Zigg, Lot 5,				1	250	per acre
J. W. Doddard, Lot 6,				13½	252	per acre
C. C. Miller, Lot 7				5	225	per acre
R. M. Remington, Lot 8,				2	225	per acre
Albert Greenstreet, Lot 9,				1¾	242	per acre
S. K. Meyers, Lot 10,				2	200	per acre
Catherine Bell, Lot 21,				1½	917	per acre
John Clinton, Lot 22				1½	917	per acre
John Wunderlich, Lot 23,				1.1	273	per acre
Mrs. G. C. Benton, Lot 24,				2¼	333	per acre
Sarah J. Anthony, Lot 25,				1	300	per acre

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ASSESSOR'S PLAT #25.					TAXES.		
Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.
A. H. McKillip, Lot 29,				1½	250	per acre	
A. H. McKillip, Lot 30				4¾	210	per acre	
Chas. Young, Lot 31,				5	250	per acre	
Chas. Gridley & Barber, Lot 33,				22	300	per acre	
Jasper Martin, Lot 34,				2	250	per acre	
Carl Cedarbloom, Lots 35, 36,				5	300	per acre	
Chas. Gridley, Lot 37,				9	405	per acre	
Ella S. Minnick, Lot 38,				5	360	per acre	
S. H. Stadler, Lot 45,				3	300	per acre	
J. Z. Clevenger, Lot 46,				2	250	per acre	
Louis Larson, Lot 47,				2	250	per acre	
ASSESSOR'S PLAT #26.							
Robt. Allen, Lot 11,				2½	180	per acre	
Fred Westenberg, Lot 12,				2	225	per acre	
ASSESSOR'S PLAT #27.							
J. H. Edwards, Lot 15,				10	300	per acre	
E. O. Best, Lot 6,				5	180	per acre	
ASSESSOR'S PLAT #30.							
Wm. Kruse, Lot 4,				2	200	per acre	
Frank O. James, Lot 5,				3½	200	per acre	
Edw. Delevan, Lot 7,				7½	160	per acre	
C. E. Sheldon, Lot 9 (part)				10	200	per acre	
ASSESSOR'S PLAT #35.							
Wm. Howard Land & Lbr. Co.: Lot 2,				2½	480	per acre	
St. Maries Land Co.				1½	867	per acre	
Cole Bros. Lot 21,				4½	222	per acre	
[215]							

Subdivision.	Sec.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES.			
								School Dist. No.	Special School.	Special Road.	Total Tax.
J. H. Harte:											
Tract "B"											
Lots 1, 2,	26	50	4	1¾	228	per acre					
E. D. Olmstead:											
Tract "F"											
Lots 1, 2,	26	50	4	2¼	200	per acre					
H. B. Luhn:											
Lot 2 of S½	23	49	4	8	196	per acre					
John Hessler:											
Lot 3 of S½	23	49	4	3	200	per acre					
Dryad Lbr. Co.:											
Lots 1, 3, 4 of SE¼	10	50	4	3.11	281	per acre					
Unknown:											
5 acres of Lot 4 of SW¼	1	50	4	5	225	per acre					
H. Gilbert											
5 of Lot 8 of SE¼	22	50	4	5	200	per acre					

Average value of this and preceding pages is \$407.21 per acre,
Maximum \$6480.
Minimum \$150.12

MEADOW HURST, NEAR ST. MARIES.

Subdivision.	Tract.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES.		
								School Dist. No.	Special School.	Special Road.
St. Maries Land Co.	1			1.24	248					
"	2			1.02	204					
"	3			.85	170					
"	4			.79	158					
"	5			.78	156					
"	6			.89	178					
"	7			.89	178					
"	8			1.10	275					
"	9			1.12	280					
"	10			1.21	302					
"	11			1.29	323					
"	12			1.40	420					
"	13			1.49	447					
"	14			1.82	546					
"	15			1.07	321					
"	16			1.14	342					
"	17			1.14	342					
"	18			.90	270					
Trueman & Wunderlick:	19			.73	229					
"	20			.94	282					
"	21			.86	258					
"	22			.68	204					
"	23			.29	116					
"	24			.45	180					
"	25			.55	220					
"	26			.62	248					
"	27			.47	180					
J. P. White:	28			.51	204					
"	29			.56	224					
Dora Lewis:	30			.57	228					
"	31			.55	220					

The values shown hereon are for each tract and not the value per acre. Values are in excess of \$150 per acre. Agricultural Land, and land is not irrigated.

The values shown hereon are for each tract and not the value per acre. Values are in excess of \$150 per acre. Agricultural Land, and land is not irrigated.

Subdivision.	Tract.	Twp.	R.	Acres.	Value.	TAXES.				
						State and County.	Road Dist. No.	Special School.	Special Road.	Total Tax.
C. G. Castor:	32			.48	192					
S. A. Hotchkiss:	33			.57	228					
St. M. Land Co.:	34			.57	228					
"	35			.57	228					
"	36			.57	228					
"	37			.57	228					
"	38			.57	228					
"	39			.57	228					
"	40			.57	228					
"	41			.57	228					
"	42			.57	228					
"	43			.57	171					
"	44			.69	207					
"	49			1.14	342					
"	51			1.08	216					
"	52			.52	258					
C. G. Castor:	56			1.08	324					
"	57			1.08	324					
"	58			.68	204					
F. B. Chase:	59			.68	204					
St. Maries Land Co:	60			1.08	324					
"	61			1.08	324					
"	62			1.08	324					
"	63			1.08	324					
Trueman & Wunderlich:	64			1.08	324					

MEADOW HURST, NEAR ST. MARIES.

Subdivision.	Tract.	Twp.	R.	Acres.	Value.	State and County.	Road Dist. No.	TAXES.		
								School Dist. No.	Special School.	Special Road.
Trueman & Wunderlich:	65			1.08	324					Total Tax.
"	66			1.08	324					
"	67			1.08	324					
St. Maries Land Co:	68			1.50	450					
"	69			1.11	333					
"	70			1.62	486					
"	71			2.39	717					
"	72			4.80	960					
"	74			3.36	672					

Values shown hereon are for each Tract and not the value per acre. Values are in Excess of \$150.00 per acre. Agricultural Land, and land is not irrigated.

Average value of Meadow Hurst is \$290.54 per acre.

Filed August 20, 1912. A. L. Richardson, Clerk. [218]

Plaintiff's Exhibit No. 23.

ELEVATIONS OF COEUR D'ALENE LAKE.

Date.	1899.	1903	1904	1905.	1906.	1907.	1908.	1909.	1910.	1911.	1912.
Jan. 1.			2122.60	2120.78	2120.78	2126.11	2121.61	2122.15		2122.70	2122.00
15.			2122.10	2120.45	2120.90	2123.78	(o) 2121.57	2122.20		2122.32	2121.70
31.			2122.30	2120.90	2121.78	2122.36	(p) 2121.70	2124.78		2121.90	2124.30
Feb. 15.			2121.70	2120.65	2122.11	2125.45	2121.86	2123.28		2121.70	2124.62
28.			2122.30	2121.28	2124.78	2127.28	2122.42	2123.86		2122.03	2124.55
Mar. 15.			(m) 2126.20	2122.82	2123.95	2125.28	2124.45	2123.22		2122.36	2122.75
31.			(n) 2124.80	2124.03	2124.78	2126.36	2126.20	2124.40	2131.45	2126.48	2124.15
Apr. 15.			2130.20	2123.65	2127.70	2128.95	2126.24	2124.86	2132.45	2126.03	2129.00
30.		(a) 2128.90	2132.40	2124.99	2128.32	2128.61	2130.32	2125.95	2132.90	2128.36	2128.42
May 15.		2129.70	2130.20	2124.78	2126.65	2129.78	2129.03	2126.70	2130.70	2128.28	2130.00
20.	2130.64										
23.	2130.00										
31.		2128.90	2129.30	2124.95	2125.28	2129.45	2127.45	2128.49	2127.53	2128.03	2130.55
June 15.		2130.00	2127.20	2124.53	2124.78	2127.11	2127.32	2227.99	2126.47	2126.61	2127.90
30.		2126.10	2124.60	2122.82	2123.11	2125.53	2125.61	2127.11	2126.28	2126.45	2125.87
July 3.	2128.24	2123.60	2122.70	2121.45	2121.95	2124.36	2126.11	2126.70	2125.82	2126.32	2126.00
15.											
24.	2123.64	(b) 2122.20	2121.50	2120.82	2121.11	2124.36	2125.86	2126.70	2124.24	2125.45	2126.00
31.											
Aug. 5.	2122.55	(c) 2121.40	2120.70	2120.28	2120.82	2123.95	2125.36	2125.95	2123.49	2124.95	2125.80
15.											
23.	2121.47										
31.		(d) 2120.90	2120.30	2120.03	2120.36	2123.70	2124.86	2125.14	2122.72	2124.12	2125.40
Sept. 15.		(e) 2120.70	2120.10	2119.95	2119.95	2123.36	2124.45	2124.28	2128.92	2123.32	2123.70
30.		(f) 2120.70	2120.00	2119.95	2119.95	2122.28	2123.78	2123.40	2121.70	2122.20	2122.30
Oct. 15.		(g) 2120.50	2120.00	2121.20	2119.99	2121.53	2123.70	2123.07	2121.45	2121.65	2121.60
31.		(h) 2121.00	2120.10	2121.11	2120.20	2122.95	2123.90	2123.82	2121.36	2122.70	2122.90
Nov. 15.		(i) 2121.90	2120.00	2120.86	2122.70	2120.82	2123.28	2124.99	2123.86	2121.40	2124.15
30.		(j) 2122.30	2120.40	2121.03	2125.07	2120.86	2123.20	2128.95	2125.36	2122.95	
Dec. 15.		(k) 2123.40	2120.50	2120.86	2124.61	2121.28	2122.78	2126.53	2124.40	2122.30	
31.		(l) 2122.70	2120.60	2120.78	2126.20	2121.61	2122.15	2123.51	2122.78	2122.50	
		(a) April 27	(d) Aug. 29	(g) Oct. 2		(j) Nov. 29	(m) March 13		(p) Feb. 12		
		(b) July 29	(e) Sept. 9	(h) Nov. 7		(k) Dec. 14	(n) March 29				
		(c) Aug. 8	(f) Sept. 29	(i) Nov. 13		(l) Dec. 30	(o) Jan. 13				

Plaintiff's Exhibit [Testimony of C. S. McCalla in Cause Washington Water Power Co. vs. Charles Waters et al.]

C. S. McCALLA, called and sworn and examined by Mr. GRAY, testified as follows:

Direct Examination.

Q. State your name, residence, and occupation.

A. C. S. McCalla; Spokane; hydraulic and electrical engineer.

Q. Where were you educated?

A. Lehigh University.

Q. When did you graduate? A. In 1896.

Q. Since that time what experience have you had in the practice of your profession?

A. I have had experience in Philadelphia, New York, Schnectachdy, Sidney, Australia, and in Spokane and this vicinity.

Q. In what lines?

A. Engineering construction work, and business matters.

Q. What kind of engineering construction?

A. Hydraulic and electrical.

Q. In what capacity?

A. Assistant general manager of The Washington Water Power Company.

Q. How long have you been connected with The Washington Water Power Company?

A. Since September, 1903.

Q. Are you acquainted with the water power which has been developed at Post Falls, by The Washington Water Power Company? A. I am, sir.

Q. Were you acquainted with it before the present development? A. Yes, sir.

Q. State what its condition was prior to the construction of the dam which is now maintained at Post Falls. [220]

A. Prior to present dam of The Washington Water Power Company there were timber crib dams installed there built by Frederick Post in the three main channels of the river.

Q. What was the elevation of the dam installed by Frederick Post?

A. The Post dam in the north channel, the crest of the dam was at an elevation of the mean sea level 2116.5 feet. The dam in the middle channel was at a slightly higher elevation; the dam in the south channel was higher still.

Q. Who prepared the plans generally, of the development of the power as it is at present maintained? A. I had direct charge of that work.

Q. Will you describe the present dam?

A. The present dam consists of solid concrete structures; the dam in the north channel is the same elevation exactly as the old Post dam and in addition to the dam has been a large excavation made at right angles to the dam and eight large gates have been installed there to facilitate the discharge of the water at flood seasons. The north channel as at present constructed will pass about 94 per cent more water, the same elevation of the water, than the old Post dams. Taking the works as a whole, the present dams in the three channels will pass about 43 per cent more water for the same elevation than the

old Post timber cribs.

Q. You say at right angles to the dam you have 8 gates?

A. Yes. Seven of those gates are 21 feet long, and one 12 feet.

Q. They reach to a lower elevation than the top of the old Frederick Post dam?

A. Yes, much lower.

Q. What have you in addition to those gates for the purpose [221] of controlling the water?

A. In the south channel we have six gates in addition to the spill-way over the crest of the dam. In the middle channel we have tubes for furnishing water—steel flumes they are—for furnishing water to the hydraulic turbine water wheels.

Q. In what channels do you control the water?

A. We control the water in all three channels; the north channel, however, being the one which is used in seasons of the year other than low-water seasons.

Q. What other gates besides the six gates in the north—eight gates—have you in the north channel?

A. We have two bear-trap gates, each 53 feet long. We have another gate what is known as mill sluice—small gate—which furnishes water to the Cable Milling Company.

Q. Describe the bear trap gates.

A. The bear-trap gate is a device for closing an opening; it consists of three timber leaves which are hinged together. There are two fixed hinges which fasten the up and down stream leaves to the concrete dam and two movable hinges which fasten the leaves at the movable ends and the gate is open when the

leaves are collapsed. At that elevation their crest, when collapsed, is at the same elevation as the old Post dam in the north channel.

Q. When they are up, what is the elevation of the top of the bear-trap gate?

A. The elevation when the gate is up, or raised, is 2126.5 feet above mean sea level.

Q. What is the purpose in having these bear-trap gates and in having the other eight gates you speak of and in having the gates in the south channel?
[222]

A. The purpose of the gates is twofold; first, to afford a free flow of the water at flood season; second, to store water to a limited depth, six and one-half feet, approximately, on lake Coeur d'Alene, for summer or low-water seasons and conserve the water which would otherwise go to waste.

Q. How is that water conserved and how are the gates operated by you—I don't mean mechanically—?

A. When the flood waters in the spring are subsiding when the level of the lake gets to an elevation below 2127 above sea level approximately, between 2126.5 and 2127 the gates are gradually closed—start in with one gate and close them day by day as the water recedes. When they are all closed the water is at an elevation of flush with the top of the gate which is 2126.5.

Q. What is the purpose in holding the water at that elevation?

A. The purpose is to conserve the water from going to waste with the spring flood and use it during

the period when the natural flow is deficient. We therefore take it and get useful energy out of it instead of having it go to waste down the river.

Q. What is a spill-way?

A. A spill-way is a term used to designate that part of the dam or flume which is used for discharging water over it.

Q. Is your dam in the north channel in which the bear-trap gates are situated designed for a spill-way?

A. Bear-trap gates are not designed to have water flowing over them.

Q. How do you regulate it there?

A. If the water begins to rise above the crest of the bear-trap we start and open some of the other gates and when the other gates—when the capacity of the other gates has been [223] exhausted we then collapse the bear-trap and let the water flow through the sluices.

Q. In other words, you don't permit the water to flow over the top of the bear-trap but control it by the use of your sluice-gates and by collapsing—

A. We do not, sir.

Q. The gate you speak of in the south channel?

A. Their purpose is identical with the other gates. They are opened at flood-water season. If we cannot control the level in the north channel. They are simply supplementary gates.

Q. At what elevation when the bear-trap gates are out about do hold that water?

A. We hold the water to the top of the gates—flush with the top of the gates 2126.5 feet.

Q. What is the effect upon the water of the amount

—height of the water caused by the construction of the present dam at Post Falls as compared with the condition which existed prior to the construction of the present dam and while Post's dams were there?

Mr. KEARNS.—Where do you mean—what effect where, at the dam?

Mr. GRAY.—Yes, at the dam.

(Question withdrawn.)

Q. What effect has the present dam upon the level of the water in Spokane River as compared to their levels which would exist under the old conditions?

A. It has the effect in flood water season of lowering the natural level and in the low water season of raising it to some extent.

Q. What effect has it upon the levels of the water in the Coeur d'Alene Lake? [224]

A. It has practically the same effect.

Q. What do you mean by practically?

A. Of reducing the level at flood season and raising it slightly in low water season.

Q. Are you familiar with the St. Joseph and Coeur d'Alene Rivers—with the Coeur d'Alene River? A. Yes.

Q. What kind of a river is it?

A. It is a river that in the summer time is very sluggish stream—practically slack water.

Q. At other seasons?

A. At other seasons—at flood season the current is much swifter and the river rises beyond its banks and floods the surrounding land between the banks and the hillsides.

Q. What effect has the dam as now maintained and

constructed under your supervision upon the level of the water in the Coeur d'Alene River?

A. It has the effect at flood season of lowering the levels—generally has the effect of reducing the quantity or *acerage* which is annually overflowed at flood season, and during low water seasons it has the effect of raising the water to the extent of the raise in the gate above low water level.

Q. When you have your gates all closed and the water at Post Falls is at an elevation of 2126.5 above mean sea level, what is the elevation of the surface of the water in Coeur d'Alene Lake?

A. There is no appreciable current of the water in the lake or the river which means there is a uniform level—practically level line.

Q. What is the elevation of the water in the slack water portion of the Coeur d'Alene River? [225]

A. The same elevation as the water at the dam. Slack water—no appreciable velocity.

Q. How do you know that is a fact?

A. You can tell by looking at it. There is absolutely no current there. Logs will float with the breeze.

Q. It is a physical fact?

A. Physical fact, yes—could not be otherwise.

Q. What season of the year is it that the water is low naturally, in Coeur d'Alene lake and the Spokane River?

A. Low water season extends from the middle of July depending on the season—October up to February; the low water season, it is lowest in September and October as a rule.

Q. How much power with the present dam that you have constructed at Post Falls that you are now maintaining, do you develop with the storage reservoir which you have—which you are using, by the maintenance of the present dam?

A. With six and one-half feet of storage which the design of the bear-trap will permit storing in the lake we can develop at Post Falls, about 11,900 horse-power.

Q. During low water?

A. During low-water season.

Q. 11,900? A. 11,900.

Q. During high water?

A. We have installed about 15,000 horse-power.

Q. There is more than water enough to supply you during that period of time? A. Yes.

Q. Without that storage what horse-power, average horse-power, at low water could you develop—at average low water—I mean during those low-water months? [226]

A. Our low-water flow at Post Falls would permit us to develop about 5,650 horse-power.

Q. You say that would permit you to develop that?

A. Without any storage, yes.

Q. That is a gain of how much?

A. A gain of about 90 per cent, the difference between 5,650 and 11,900.

Q. That would be over 100 per cent, wouldn't it?

A. No, sir, 11,900, about 90 per cent more than 5,650, I think. (Figures.) Yes, I am in error, the low-water flow is 6,250 horse-power. With a storage of six and a half feet we get 11,900, a gain of 5,650

horse-power, about 90 per cent.

Q. You have been using that horse-power during the last—since the construction of the dam?

A. Yes.

Q. Where is it distributed?

A. The power is distributed to the Coeur d'Alene Railway operating between Hayden Lake and Coeur d'Alene, Post Falls, and Spokane; to the town of Post Falls, Rathdrum, Coeur d'Alene City, and different mining companies in the Coeur d'Alene Mining District and for lighting the towns on Canyon Creek, Burke, Mace, Gem, Black Bear and the town of Mullen, Wardner and Kellogg. Power is also used on or will shortly be for pumping, irrigation in this county—Kootenai.

Mr. KEARNS.—I move to strike out that voluntary statement of the witness. Not supporting any allegation of the complaint, and it is not responsive to the question asked him.

The COURT.—It may stand.

Exception. [227]

Mr. GRAY.—How much power is used by electric railroad of which you have spoken?

A. The Coeur d'Alene railway uses between 1300 and 1400 horse-power. I think their last bill, as I remember it, was in the neighborhood of about 1380 horse-power and steadily increasing.

Q. How much horse-power is used by the mines, purchased from you by the mines and mining interests, for use in Shoshone County?

A. That amount varies for different seasons of the year. We furnish, as shown by our bills in the past

year a total of 8600 horse-power. We have actually furnished from our Post Falls plant 11,000 horse-power.

Q. At one time? A. At one time, yes.

Q. Does the amount which you are called upon to furnish to those purchasers of power in the mines vary from day to day and month to month?

A. Yes, it does vary.

Q. And from year to year? A. Yes.

Q. How much of it is used for lighting purposes to Post Falls, Coeur d'Alene and Rathdrum?

A. I don't know exactly, but I should think Post Falls, Rathdrum and Coeur d'Alene would take in the neighborhood of from five to seven hundred horse-power.

Q. I will ask you what the facts are as to the demand for power for various purposes increasing in Idaho.

A. The demand is steadily increasing. Our ratio of increase varies from twelve and one-half to thirty-three and one-third [228] per cent per annum. About 16 per cent at the present time.

Q. How is this power distributed from the plant at Post Falls?

A. Coeur d'Alene Railway the power is furnished direct from the plant to their transmission line. The power for Coeur d'Alene, Post Falls, and Rathdrum is similarly furnished from the plant to the consumer's transmission line. The power to the mining district is furnished them delivered at their works over our own line.

Q. How many miles of transmission line has The

Washington Water Power Company now in operation in Idaho?

A. I have got the exact figures somewhere. I think I gave you that memorandum that I had. One hundred and eighty some odd, as I recollect it—178.

Q. I will find it for you.

A. I think about 178 miles.

Witness excused.

Same witness recalled.

Mr. GRAY.—In designing and constructing the plant at Post Falls—dams at Post Falls, and your power plant, why did you fix the elevation for the top of the bear-trap gates at an elevation of 2126.5 feet above the mean sea level?

A. That level was made—was determined upon after a *recognizance* which I made of the lake and tributaries as a reasonable limit to which we could go and get an economical development.

Q. In determining upon that elevation you exercised the experience and study which you had given to electrical construction and engineering? [229]

A. I did, sir. It was made after careful *recognizance* of the situation.

Q. With a view to the most practical and best suited development of the power there? A. Yes.

Q. Did you have in view the question of the most reasonable and proper conservation of the water for the purpose of providing power during the entire year? A. We did, sir.

Q. After your *recognizance* and consideration given to the matter, you determined upon that elevation as the proper elevation for the most feasible

and practicable development of that power?

A. Yes, sir.

Q. And in the development of that power for the purpose of generating electricity for the purposes to which it was to be devoted, did you regard that elevation as reasonably necessary to the proper development of that power? A. It was, sir.

Q. The elevation you have testified to, the elevation of the top of the bear-trap when raised as being 2126½ feet you have fixed that as the point at which the dams are designed to hold and conserve the water. In this complaint in this action the land at an elevation of 2128 feet is sought to be condemned. Why do you consider it proper or necessary at all to have the land to that elevation?

A. We have to have some limit to the reservoir—considered that would be liberal—proper elevation to go to; going to that elevation would be on the safe side in taking all of the land that could possibly be affected and more.

Q. Do you regard it reasonably necessary to go to that elevation?

A. I think we were liberal in going that high.

Witness excused. [230]

C. S. McCALLA recalled.

Mr. GRAY.—Q. Have you a photograph showing the dam and holding works at Post Falls?

A. Yes, sir.

(Photograph marked Plaintiff's Exhibits "B," "C," "D," "E," "F" and "G.")

Q. I will ask you to take them in their order and state what they are. (Hands witness photograph.)

A. "B" is a photograph of part of the controlling works or dam in the north channel of the Spokane River at Post Falls. It shows the bear-trap gates in the raised or closed condition. To the left of the photograph is shown the flow of water which comes from the tainter-gates which are placed at right angles to the bear-trap. The photograph was taken at the season of the year between high and low water—slightly above low water. Part of the water was passing through the tainter-gates. Exhibit "C" shows a view in the same channel at Post Falls taken at a period of flood water. It shows the situation at that time with all of the gates open. It might be well to state that this photograph was taken before the previous photograph, Exhibit "B," and shows the bear-trap as originally constructed and one gate. For convenience in operation it was later split into two gates by a small pier in the middle; it operates more readily that way.

(COURT.) Is the bear-trap in this picture as low down as it can be?

A. Yes, there are two positions. It is either all the way down or all the way up. It is all the way up in the first one and all the way down in the other. The water is controlled by means of the tainter-gates up to their limit. When the water gets up to the height of the top of the bear-trap then those gates are opened. Those gates are opened, and when the water gets up to the top of the bear-trap and has a tendency to flow over the bear-trap, it is opened to prevent the water flowing over it. The bear-trap is not designed to have any water flowing over it; in

fact, [231] it would be a dangerous condition to permit. Exhibit "D" is a photograph taken in the south channel of the Spokane River at Post Falls and shows the gates and structure in that channel at a period of flood water, the gates being wide open and water flowing through them. Exhibit "E" is a photograph taken in the middle channel of the river at Post Falls looking down stream toward the power station. It shows where the water enters through the racks and then into the steel flume and the water-wheel. Exhibit "F" is an interior view in the power station. The station is in the middle channel. The water enters from the Fore Bay shown in the previous picture coming down to the 11-foot steel flume into the water-wheel. The photograph shows five generating units. The water-wheels are 3260 horsepower each and they are directly connected to the electric generator. Exhibit G is a view taken in the middle channel looking upstream and shows an exterior view of the power station. The white water to the right of the picture is a small spill-way used for sluicing off rubbish and trash that may accumulate above the racks.

(Mr. GRAY.) I offer these photographs in evidence.

A. The photographs are taken by Mr. Tolman, photographer of Spokane office in the Golden Gate Block.

(Mr. KEARNS.) We object to those as incompetent, irrelevant and immaterial to the issues now before the Court in this case.

Objection overruled.

(COURT.) They will be admitted.

Exception.

(Mr. GRAY.) They are offered for the purpose of explaining the conditions there in connection with the testimony.

Q. How many mining companies in the Coeur d'Alenes were furnished [232] electric power during the past year, 1909?

(KEARNS.) Objected to. Same objection we have made heretofore.

Overruled.

Exception.

A. We have been furnishing power to 28 companies, not all of which are mining companies.

(Mr. GRAY.) Q. I was asking for mining companies.

A. There are 25 mining companies, two of which are the Frisco and Pittsburg, have not been using any power in the last year. With those two exceptions leaving in the neighborhood of 23.

Q. What amount of power is furnished—what is the range of the amount furnished, what is the lowest?

A. I cannot give the lowest exactly but it will be in the neighborhood of five or six thousand horsepower.

Q. The lowest to any one company?

A. I cannot tell exactly but it runs down to a very small amount. Some of the small prospects, the American, for instance, used about one and one-third kilowatts, that is in the neighborhood of two horsepower.

Q. And from that up?

A. From that up in the neighborhood of 3,000 horse-power each. There are a number of small ones that run two and three.

Q. Without going into details about how much has been invested in the construction of the dam at Post Falls and the generating works, pole-lines, and so forth?

(KEARNS.) Objected to as irrelevant and immaterial. To prove the right of the company, to take and condemn the land of the defendant, or any necessity for taking and condemning.

(COURT.) I am not prepared to say that that would not be correct, still I desire to hear that as well as a number of other matters [233] that will be objected to on one side or the other. Overruled. Exception.

A. I could not give you the exact amount but it is quite a considerable sum, in the neighborhood of a million dollars—very close to a million dollars, might be a little above or a little under.

(Mr. GRAY.) Have you any data or curve showing the elevation of the water in the Coeur d'Alene lake, Spokane River, and the mouth of the St. Joe River and Coeur d'Alene? A. We have, sir.

Q. Will you get that?

(Witness goes to table to get papers.) Paper marked Plaintiff's Exhibit "H."

Q. This Plaintiff's Exhibit "H" which I hand you is what?

A. This print contains a number of curves in different colors, and indicates the level of the water

in Coeur d'Alene lake for the different years from 1897 up to the latter part of 1909, inclusive, with the exception of the early part of the year 1903. I did not get the record for that.

Q. What are the words and figures on the bottom?

A. The figures on the bottom indicate the days and months of the year. The figures on the vertical lines to the left and right of the sheet running from zero to 14 indicate feet on the gauge.

Q. What gauge?

A. The gauge at the mouth of the St. Joe River maintained by the St. Joe Boom Company. The figures in the parallel columns represent feet above the mean sea level which indicates the water levels as taken from the gauge in Coeur d'Alene established by the United States Geological Survey.

Q. That is what is commonly known as the Rosen gauge? A. Yes. [234]

Q. At the Rosen boathouse? A. Yes.

Q. At the dock? A. Yes.

Q. From what source did you get the data on which these curves were platted? First, the key.

A. The key at the left-hand side of the map shows the years to which the different colored curves refer. The full (flow) lines, the actual reading of the water levels as taken by actual reading. The dotted lines cover the calculated levels from the year 1897 to 1903.

Q. From what are they calculated?

A. The calculated readings are derived from the known lake levels and known river flow; previous to 1903 there were no readings taken on the lake. We

were able to get, at the suggestion of Mr. Stevens, the engineer in charge of the Portland office of the United States Geological Survey, who was sent up here some time ago by the Government in connection with the overflow of the St. Joe lands—he suggested it would be desirable to ascertain approximately the lake levels in previous years and stated it could be done very closely. We followed that suggestion and secured the dotted curves.

Q. From the flowage of the Spokane River as read by the Government?

A. From the known flow or volume of water in the Spokane River, which were taken from the gauging station used by the United States Geological Survey in Spokane. The said survey was done by their men.

Q. Did you check the curves derived from the flow with the known lake levels as secured from Mr. Bloom at St. Joe sorting works? [235]

A. We did, sir. The readings which we took from the Rosen gauge, Coeur d'Alene City, platted them on the sheet-tracing cloth—and then we platted the curves taken by Mr. Bloom of the St. Joe Boom Company at the mouth of the St. Joe River on another sheet of tracing cloth and the readings of Mr. Bloom and Rosen for the same year were superimposed, one sheet upon the other and we found the readings coincided remarkably well.

Q. Were those curves compared at the suggestion of Mr. Stevens?

A. They were submitted to Mr. Stevens and I have a letter from Mr. Stevens stating that they agree very closely with his own calculations. As an

indication of the closeness of them, there were later found some readings published by the Geological Survey in the water supply papers published by the Government in Washington for the year 1899—part of that year—and which are shown in the circles here. That same year shown in this brown dotted line. They are within a very few inches of the readings shown by the Government water supply paper.

Q. In the spaces from right to left on the plat the plat is divided into days, is it not?

A. Horizontal spaces, each small space represents one day, the large spaces represent ten days periods. The vertical scale is divided similarly, the small divisions being one tenth of a foot—being ten divisions to a foot.

Q. That was platted under your supervision?

A. Yes.

Q. As correct as is possible to plat it? A. Yes.

(Mr. KERNS.) Opposite the year 1907 there appears to be a purple line? A. A red line.

Q. Commencing practically at the 9th of July and passing on down to November; that shows the elevation the water was raised by your [236] dam in 1907? A. From the 17th of July it does; yes.

Q. And the next line, the blue one, for about the same period in July shows the elevation it was raised in 1908?

A. That shows the lake levels in 1908.

Q. The one in black? A. 1909.

Q. Shows it still higher during a portion—

A. Yes, it gets down below it. It crosses the pre-

vious year, about the 5th or 6th of October.

Q. What is this line here dotted black?

A. This dotted black line is the year 1900.

(Mr. GRAY.) We offer that in evidence.

(No objection.)

(COURT.) It may be admitted.

(Mr. GRAY.) Are you familiar with the cost of generating steam power? A. I am, sir.

Q. And in this territory? A. Yes.

Q. And the city of Spokane? A. Yes.

Q. Where railroad rates are quite as favorable as here? A. Yes.

Q. What is the cost of generating electric power by steam per kilowatt here?

(Mr. KERNS.) Objected to as incompetent, irrelevant and immaterial to any issues now before the Court.

(Mr. GRAY.) I am inclined to think that is correct but counsel seemed to think it was not yesterday.

(COURT.) I am inclined to take that view myself, but he may answer.

Exception. [237]

(Mr. GRAY.) He asked a number of questions concerning it.

A. Under very favorable conditions as to modern and efficient plants good facilities for handling it, steam power here would cost at the power-house switch-board in the neighborhood of one and one-half to two cents per kilowatt hour. The worst feature of the steam situation out here, however, is the difficulty and the uncertainty of securing coal.

It is plentiful at times and at other times—which happen to be the time you need it most—it is difficult and sometimes impossible to get it on account of car shortages or railroad tie-ups or mine tie-ups.

Q. What is the price in Coeur d'Alene mining district at which you are selling electrical power?

A. In the neighborhood of three-quarters of a cent—.0776 cents to be accurate.

(COURT.) What was the cost of producing electric power by steam?

A. From one and one-half to two cents—switchboard.

(Witness excused.) [238]

C. S. McCALLA, recalled for cross-examination and examined by Mr. KERNS, testified as follows:

(GRAY.) There is one more question I desire to ask Mr. McCalla. Q. Do you know, that is, from your experience and exercise of your judgment, consider 2,128 feet is the reasonable, proper and necessary level which the Washington Water Power Co. should acquire for the use of a reservoir?

A. Yes, sir, it was determined on that basis.

(KERNS.) I understood you to say that prior to the construction of the Post Falls Dam you had made an inspection of the land that would be affected by the overflow caused by the raising of the dam 10 feet; is that correct?

A. You misunderstood the statement. I said I made a *recognizance* of Coeur d'Alene Lake and tributaries.

Q. Don't you call that the Coeur d'Alene?

A. Yes, Coeur d'Alene River, St. Joe River.

Q. When you made that *recognizance* what did you find in the Coeur d'Alene Valley?

A. I found Coeur d'Alene River with banks rising rather steep forming a narrow strip of rather higher ground bordering the river, the land sloping back and lower covering quite an area up to the side hills. This intervening land between the hills and the river bank and generally along the river, in the lower reaches especially was covered with water, it was a swampy, marshy nature, the water on that swamp being from 2 to 6 feet in elevation higher than the river. I have since found that the same condition existed in the St. Joe, on several occasions since.

Q. Did that condition exist where drain ditches had been excavated from the meadows out to the river?

(GRAY.) Objected to as improper cross-examination, immaterial and irrelevant; he said he made a general *recognizance*. [239]

Overruled. Exception.

A. Where *there* ditches were cut through and the water had free access to the river the water, of course, in the ditches was on the same level as the water in the river. The whole country is flooded in the flood seasons varying from 5 or 10 up to 18 feet in depth.

Q. What season of the year was it that you made this *recognizance*?

A. I was there in April, 1905.

Q. This condition existed on both sides of the river, did it? A. Yes, sir, places both sides.

Q. Can you give us an estimate of the width of the valley?

A. No, sir, I could not; the map shows it there.

Q. How far up the river did that condition exist from Coeur d'Alene Lake?

A. I went up the river almost as far as the county line.

Q. Shoshone County line? A. Yes, sir.

Q. A distance of about 25 miles was it?

A. It is shown on the map, I didn't measure the mileage.

Q. Did that same condition exist in the St. Joe River?

Objected to as improper cross-examination, incompetent, irrelevant and immaterial.

(COURT.) I do not remember positively his answer, but my impression is he answered as to Coeur d'Alene River.

(KERNS.) He made the statement covering the river and lake.

(COURT.) You may answer it anyway. Exception.

(KERNS.) What is the distance or area of on the St. Joe River up as far as the rise in the level of the water affects it?

(GRAY.) Objected to as improper cross-examination, irrelevant, and immaterial. He did not testify that that *recognizance* he ascertained or determined that, he don't know anything about the raising of the water in the St. Joe River.

(COURT.) He can answer. Exception. [240]

A. No estimate of acreage was made at that time.

(KERNS.) Can you give us the approximate areas of Lake Coeur d'Alene in miles?

(GRAY.) Objected to as improper cross-examination.

Overruled. Exception.

A. Somewhere in the neighborhood of 45 square miles—40 or 45.

(KERNS.) Q. What is the length of the Spokane River *deom* Lake Coeur d'Alene to the dam at Post Falls?

A. Somewhere between 8 and 10 miles.

Q. What is the length of the Coeur d'Alene Lake?

A. I think it is about 25 miles up to Harrison—considered about that; I never measured the distance.

Q. Prior to constructing this dam did you make any estimate of the area of farm land and meadow land that would be overflowed by reason *or* raising the water 10 feet at Post Falls?

(GRAY.) Objected to as improper cross-examination, irrelevant and immaterial.

Overruled. Exception.

A. I determined from the *recognizance* I made that no material amount of land that was worth anything would be affected.

(KERNS.) Q. By land worth anything what do you mean?

A. By land that is not worth anything I mean swamp land—marsh land.

Q. Do you consider land that will raise from one to two tons of hay per acre would come within that class?

(GRAY.) Objected to as improper cross-examination, no foundation laid for the question.

Overruled.

(GRAY.) Immaterial and irrelevant. Exception. [241]

A. I would not consider land worth much that would raise a ton of sedge hay an acre on occasional years.

(KERNS.) In the month of April, when you made this inspection there was not any hay there to be seen; you could not see the character of the land for agricultural purposes, could you?

A. Yes, I could see pretty well.

Q. Did it have any blossoms out at that time of the year?

A. No, no blossoms out; you could see the stubble—wire grass or eel grass.

Q. Did you examine that grass?

A. Yes, I took a sample of it—a number of samples in fact.

Q. Spokane River from Lake Coeur d'Alene to Post Falls dam is a navigable stream, is it not?

A. It is now, yes.

Q. What sized stream is it now?

A. It is quite a wide stream—sluggish.

Q. Give the approximate width of it—approximate average width.

A. I could not tell you that for naturally it varies in width.

Q. Can't you approximate it?

A. It has considerable sectional change, the velocity is very low indeed.

Q. Is it not a fact that it is a stream 500 or 600 feet wide? A. Yes, I think it was.

Q. Up to 30 feet in depth?

A. In places it is 30 feet in depth.

Q. In places 500, 600 or 700 feet in width?

A. At the outlet of the lake where the lumbermen have driven logs [242] it has been so shallow that the logs grounded there and formed a jam; had to get in with teams and snake them out.

Q. When was that?

A. That, as I recollect it, was in either 1905 or 1906. I have forgotten the time—I recollect it was 1905.

Q. Lake Coeur d'Alene is a navigable body of water, is it not? A. In places, yes.

Q. Coeur d'Alene River is navigable from the lake about 25 or 30 miles, is it not?

A. For light draft boats.

Q. The St. Joe is also navigable? A. Yes.

Objected to as immaterial.

Overruled. Exception.

Q. These rivers are navigable for all boats that navigate Coeur d'Alene Lake, are they not?

A. They are to a certain extent. I understand they have considerable difficulty at times, or used to, at the low-water stage, in getting the larger boats up the river.

Q. Which larger boat?

A. Some of the larger lake boats.

Q. Do you know any of them?

A. The "Idaho," for instance.

Q. How much draft has the "Idaho?"

A. I never measured it.

Q. Don't know anything about it? A. No, sir.

Q. Did you make an estimate of the electrical power you could generate by means of the Post Falls dam prior to the construction of the dam?

A. Yes, sir.

Q. What amount did you estimate you could develop? [243]

A. The amount I testified to this morning.

Q. I would like you to give me those figures. My figures may not be correct. I understood you to say you could develop 11,900 horse-power in low water.

A. You misunderstood me.

Q. That is what I want; I want to be corrected.

A. At low-water flow we can develop 6,250 horse-power without any lake storage.

Q. How much horse-power can you develop with your present dam, bear trap and headgates?

A. About 11,900 with lake storage, low water.

Q. 11,900. How much can you develop at high water with lake storage.

A. Lake storage don't cut much figure at high water; we get more water than we have capacity—water wheels; we have installed five units, 3,260 horse-power capacity.

Q. You have sufficient water there to run those generators to their capacity?

A. At the present time, yes.

Q. That is over 16,000 horse-power, is it not?

A. Yes, about that; about four times the minimum flow in the river now.

Q. What do you call minimum flow?

A. The minimum flow without storage we find is about 1,200 second feet at Post Falls and call it about 4,800 second feet at the present time.

Q. When did you take that measurement?

A. The figure is taken from the Government gauge and curves taken by the Government reading taken by the Geological Survey at Spokane.

Q. You didn't take that?

A. No, sir, it was taken by the Government.

[244]

Q. Your information about the minimum flow in the river you are giving the figures prior to the building of the dam, are you? A. Yes.

Q. When did that amount of water flow there, minimum flow, what year?

A. It flowed about that minimum in 1905 and 1906 as I recollect it, extending over a considerable period.

Q. Both of those years? A. Yes.

Q. Do you know that of your own knowledge?

A. Yes, taking the curves.

Q. When was that dam completed?

A. At Post Falls?

Q. Yes.

A. The bear-trap was raised about the last of August, in 1906; I think it was the 30th of August.

Q. And the flow, did you take those measurements between Post Falls and Lake Coeur d'Alene? Did you take those measurements above or below the falls.

A. That is the Government gauging station at Spokane.

Q. You were not taking the measurements between Post Falls and Lake Coeur d'Alene?

A. No, sir.

Q. You don't know what that is?

A. We know in a close way the relative flow from Post Falls to Spokane at that stage is about 200 cubic feet per second greater than Post Falls.

Q. You have 200 feet per second over this 1,200?

A. No, sir, the 1,200 is the flow at Post Falls.

Q. How do you know?

A. We know from the flow at Spokane; we know the flow at Spokane as we have figured it carefully from all the information we could [245] get that the flow at Spokane at that stage is about 200 feet greater than the flow at Post Falls.

Q. The flow at Spokane is greater than the flow at Post Falls? A. Yes.

Q. How do you account for that?

A. That is accounted for very easily. There are a number of lakes which are tributary to the Spokane River between Post Falls and Spokane, Hayden Lake, probably the underground flow comes in there and a number of other lakes, Sucker, Liberty, all those lakes have an underground flow and that goes through the gravel of the valley.

Q. Do you know that?

A. Yes, I practically know that; it is a matter of scientific knowledge.

Q. How do you know it? Where is the outlet to Hayden Lake?

A. We don't know. We do know there is an underground flow throughout the valley of the Spo-

kane River. At Post Falls we had a rather interesting phenomenon there in the development of the work. We had in the middle channel of the river a coffer dam off so in the bed of the river was no water. We did this by means of three coffer dams, the two upstream, one being in the middle channel, the other being in the south channel, the third coffer dam being downstream and across the junction of the two channels; the water against the upstream coffer dam was perhaps 10 or 15 feet deep; the water against the lower coffer dams was 6 feet deep; the coffer dams were not tight; they were leaking considerable; in fact we had installed a large pumping plant to pump out the intervening part of the river bed which we wished to keep dry to work on, and after pumping this arm of the river out commonly known as Boone's Lake we found we did not have to use the pump at all; [246] the water seeping through and pouring through in a considerable stream and ran away and seeped away and disappeared although the water 20 feet from it in the main river was six feet deep.

Q. Would it not be just as well to presume that underground seepage from Coeur d'Alene Lake furnished that supply of water as from Hayden Lake or lakes more distant from the river?

A. No, sir, from the geological formation of the valley it has been determined that there are two main ridges of rock across the valley, one granite ridge at Post Falls which is the real formation of the Falls, and another, a soft ridge at Spokane. These two ridges have the effect of deflecting the water to the surface. The flow at Greenacres for instance, which

is between Spokane and Post Falls is very much less than the flow either at Spokane or at Post Falls.

Q. How far distant is Hayden Lake from Post Falls?

A. In the neighborhood of about 11 miles, I should think—I guess it is more than that.

Q. What was the maximum—

A. A good deal more than that, about 15.

Q. What is the maximum flow of the Spokane River above Post Falls prior to the building of the dam?

(Mr. GRAY.) Object to the maximum flow as having nothing whatever to do with this.

(COURT.) I don't know what counsel's purpose is.

A. The maximum flow of the river at Post Falls and Spokane are probably not very far apart, so that the maximum flow as taken from the Government gauging station at Spokane would be a very fair value at Spokane, the underground flow at that time being a very small portion relatively of the entire flow. I should think that the flow there would be the same as the Government record shows it is at Spokane. [247]

Q. What is that?

A. The highest flow, I think, we have on record—I can look at some data I have here and give it to you pretty accurately—pretty closely. (Shows witness map.) The maximum flow is about 33,000 second feet since 1897. That occurred in 1897. The flow in 1894 was materially higher than that. The Government gauging station was not in existence at that

time but from data we have from our dam in Spokane there was probably at least 10,000 second feet more than in 1897.

Q. How much electrical power—horse-power—are you furnishing to mines in Shoshone County during 1909?

A. I think I stated that this morning or yesterday. We furnish from our plant at Post Falls the maximum of 11,000 horse-power at one time.

Q. At one time?

A. At one time. From our building records we were actually paid for about 8,600 horse-power. The amount that we furnish from Post Falls, for certain reasons would be less than what they actually paid for.

Q. How much power did you furnish the Bunker Hill & Sullivan that year?

A. We furnished the Bunker Hill & Sullivan—

(Mr. GRAY.) This may be a matter of information but I don't think it is material.

(The COURT.) It is material; you went into it on direct examination.

A. 190 kilowatts.

(Mr. KERNS.) How many horse-power is that?

A. About one-third more horse-power. A kilowatt is about—between thirteen and fourteen hundred horse-power. That was not in 1909; that was this year, January, I think we furnished them that.

[248]

Q. In 1909? A. Nearly that much.

Q. How much did you furnish the Federal Mining & Smelting Company?

A. Between 2,900 and 3,000 horse-power.

Q. The Hecla Mining Company?

A. The Hecla we furnished 616 and three-fourths kilowatts, a little over 850 horse-power.

Q. The Hercules?

A. 433.7, a little over 500 horse-power.

Q. The Snowstorm?

A. We furnished the Snowstorm 350.15 kilowatts, about 410 horse-power.

Q. The Hunter?

A. Is that the Gold Hunter?

Q. Yes.

A. 342.19 kilowatts, about 450 horse-power.

Q. What other mines in Coeur d'Alene did you furnish electrical power?

A. We furnished to the Alice.

Q. How much?

A. The Black Bear Fraction, the Caledonia, The Great Western, the Missoula, the North American, the Rex, the Star, the Success, the West Hecla, the Page, the Butte, Coeur d'Alene, the Imperial, the Never Sweat, the American, The Copper King. We also furnished some to the Turner Lumber Company near Wallace.

Q. What is the approximate total amount furnished to those other companies?

A. The approximate total amount is about 8,600 horse-power to all of them.

Q. Those you have just mentioned; which you have not given.

A. If you will add them and subtract it from 8,600 you will about get it. [249]

Q. How much did you furnish Alice?

A. 159.10 kilowatts.

Q. How many horse-power?

A. I have got those figured in kilowatts. If you will add one-third you get the horse-power. A little over 200 horse-power. Black Tail Fraction 67.6 kilowatts, that is about 87 horse-power.

Q. Caledonia?

(Mr. GRAY.) 90 horse-power.

A. Yes, about 90 horse-power. Caledonia we furnished 20.69.

Q. The Great Western?

A. I can give those to you in horse-power, if you like. The Great Western 51.73 kilowatts. Missoula 69 horse-power—Missoula 91.52 kilowatts, about 122 horse-power. North American 15.92 kilowatts, that is about 21.2 horse-power.

Q. The Rex?

A. That was the Rex I just gave. The North American 15.92. The Rex 91.52 kilowatts. 122 horse-power.

Q. The Star?

A. The Star is 81.57 kilowatts, that is about 119 horse-power.

Q. How much of that power did you actually furnish them?

A. We furnished them every horse-power.

Q. How much did they use?

A. They used it all.

Q. They used it all? A. Yes.

Q. Did you hear Mr. Burbidge testify this morning they only used 60 per cent of it?

(Mr. GRAY.) Object to as improper cross-examination, improper question comparing his testimony with another witness.

(COURT.) He may answer as to whether he heard it.

A. You misunderstood Mr. Burbidge's answer. What Mr. Burbidge meant is that they didn't have to pay for that maximum the whole year unless they used it. The maximum amount they would have to [250] pay for for the year whether they used it or not would be 60 per cent of that. If they used it they would have to pay for the whole business.

(Mr. KERNS.) How much electrical power did you furnish in the mines of Coeur d'Alene in 1908?

A. I could not give you that off-hand. There was probably not very much difference; might have been a little bit less. There was a falling off in October panic, 1907.

Q. How much of that power generated at Post Falls are you furnishing to the cities of Post Falls and Rathdrum?

A. I think we furnish in the neighborhood of 500 horse-power; I could not say exactly, but in that neighborhood to Rathdrum, Post Falls, Coeur d'Alene City. The major part of that comes to Coeur d'Alene.

Q. And the power you furnish to the towns in the Coeur d'Alene country and Shoshone County goes through the Bunker Hill & Sullivan Company?

A. Yes.

Q. You don't have any dealings with those towns, do you? A. Not directly.

Q. You don't have any dealings with Post Falls, Rathdrum or Coeur d'Alene? A. Yes, we do.

Q. In Coeur d'Alene it is through a subcompany?

A. We furnish to the holding company here direct.

Q. Does the Kootenai Company have a franchise in this town? A. I could not tell you.

Q. Has your company, The Washington Water Power Company? A. I believe we have, yes.

Q. You have a franchise?

A. We run our pole line—

Q. That is just a right of way where your high tension line runs [251] through the city?

A. I don't know. I imagine we would have to have a franchise to get through.

(Mr. GRAY.) We don't claim we have any lighting franchise.

A. We handle it simply as wholesalers to the distributing company.

(Mr. KERNS.) I understood you to say that your increasing demand for electric power has been about thirty-three per cent per annum?

A. I said it varied from 33 and one-third to about 12. The percentage decreased very rapidly after October, 1907. Our percentage decreased in 1908—fell right off from 33 and one-third to about 12.

Q. In 1909 what was it?

A. About 16, as I recollect it.

Q. In the meantime The Washington Water Power Company has been increasing its capacity for furnishing power? A. Yes.

Q. Where? A. Post Falls.

Q. Where else?

(Mr. GRAY.) Object to that as immaterial. Certainly the company has a perfect right to increase its facilities to meet the growing and increasing demand for power. I don't see where that has anything to do with it—with this investigation.

(COURT.) It strikes me that some phases of that are very material. Whether it is proper for cross-examination or not is another matter, but I think some phases of that matter are very material. The only question in my mind is whether that should be brought in now.

(Mr. GRAY.) If there is anything the Court wants to know from Mr. McCalla and he knows it, I am willing he shall answer.

(COURT.) He may answer.

A. The Post Falls plant when built was completed in the entire installment necessary except the machinery. In other words, we had [252] to stand the interest on the entire investment whereas we could only use about one-third of it. We first put in two units. We have increased that from year to year until we now have five units; installed the last unit about a year ago. There are now five units in operation and we have room in the plant for one other which was prepared really as a spare unit. In other words, the capacity of the plant as an economical capacity is now about completed.

Q. Where else did the Washington Water Power Company increase its capacity?

A. We installed a steam relay station in Spokane, not at all to increase our capacity but so as to insure reliability on the contract we already had.

Q. Have you increased the amount of power generated at Spokane?

(Mr. GRAY.) I object to that as immaterial. The question of what power is developed in some other state.

(COURT.) It seems to me it is very material. I do not hesitate to say I desire information on it. Probably we may disagree as to its admissibility in this inquiry but it seems to me it is a proper inquiry here as to what plant this company has elsewhere and as to the effect if any that this reservoir may have upon those plants.

(Mr. GRAY.) I will withdraw the objection.

A. The company is preparing plans now for the development of the upper falls in Spokane. It will require about three years to make the development. Again through lake storage of this plant of about 12,100 horse-power.

Q. What horse-power did you have before that?

A. With a total fall developed without lake storage we will have 21,300 horse-power.

Q. That is with the gain?

A. No, that is without lake storage. 21,300.
[253]

(The COURT.) Is that the present capacity at Spokane?

A. No, sir, that is with the upper falls developed. With the storage we will get 33,400 horse-power giving a gain of 12,100. The cost of developing would be very nearly the same. There would be a slight difference and a little bit on the machinery. The actual machinery is a relatively small part of the total

cost of development.

(Mr. KERNS.) In other words, by holding the water of Lake Coeur d'Alene and the reservoir and basin, you increase the power of your Spokane plant from 21,300 to 33,400 horse-power?

A. That is it exactly. We contemplate to put in there four 7,500 kilowatt generators, 30,000 kilowatt, or a total of 40,000 electrical horse-power.

Q. Isn't it a fact that The Washington Water Power Company has another dam for the generation of power in the Spokane below the Spokane dam?

A. They have one in process of construction, yes.

Q. How long has that been in process of construction? A. Nearly two years.

Q. How near is it to completion?

A. We hope to have part of it—the first part of it—running in the neighborhood of next October or November, somewhere along there.

Q. That new dam can be added to as demand for electric power continues to grow?

A. Unfortunately, the entire dam has got to be put in the first time. In other words, the entire investment has got to be made as far as dams and buildings go.

Q. You can add to your units in that dam the same as you add to them at Post Falls?

A. Yes, the building will hold four units. The lake flowage there will give us a gain of about 5,400 horse-power.

Q. Without lake storage, how much power could you generate in that new dam? [254]

A. Without lake storage we can generate in the

neighborhood of 13,600.

Q. With lake storage how much?

A. About 19,000. This same storage affects the city of Spokane. It has a pumping plant for water supply. It also affects any power site on the river.

Q. It is a benefit?

A. It benefits it, yes, it benefits the city about 67 per cent.

Q. Is your Spokane plant connected with the Coeur d'Alene mines by the high tension transmission line?

A. Not in an ordinary operating condition. We have a duplicate pole line one of which runs direct from Post Falls, the other of which runs down to where the O. R. & N. comes into the valley and it connects there with a line running down into the Palouse country. A branch which was the original line through the Coeur d'Alene Indian Reservation and up into Coeur d'Alene. This line was built in 1902-1903.

Q. Is it connected in any manner with the Post Falls line?

A. Under ordinary conditions of operation it is held as a relay in case of trouble with the Post Falls line.

Q. In other words, you have it equipped so you can make a ready connection in the case of anything happening to the other lines to Coeur d'Alene?

A. We can make an emergency service—ready connection—and can furnish emergency service. It is not very good service. It is nearly twice as long a line and the service we would give thereby would not

compare with the shorter line. The loss also would be very great.

Q. How much of this power generated at Post Falls is used on the electrical railway line between Spokane, Coeur d'Alene and Hayden Lake?

A. We are furnishing between 1,300 and 1,400 horse-power. The last [255] month we furnished 1380-odd horse-power.

Q. Is that under contract with the railroad company? A. It is.

Q. That railroad company is also operating a railroad line into the Palouse country in Washington.

A. Yes.

Q. You also have a contract for supplying that company power?

A. They furnish their own power from their plant at Nine Mile Bridge.

Q. That is an electric railroad?

A. The Palouse line—

Q. The Company that owns the electric railway line from Spokane to Coeur d'Alene and Hayden Lake also owns the water power plant for the generating on Spokane River?

A. They have their own plant but they cannot furnish all of their power for their service. They have a contract with us for a minimum of 3,800 and they are using between 3,000 and 4,500.

Q. When was that contract made?

A. Three years ago.

Q. It is a ten year contract, isn't it?

Objection.

(Mr. GRAY.) Our rival company could compel them—

A. They certainly would compel them to.

(Mr. KERNS.) Compel them to under the contract?

(Mr. GRAY.) Objected to as being outside of the issue, immaterial and irrelevant.

(COURT.) Answer.

A. They have a contract which requires the furnishing of 3,800 horse-power; they are taking from 4,300 to 4,500 horse-power and we felt at that time that they would have the right to compel us, as a public service corporation to furnish it to them in any [256] event even while the contract is at a low price—we thought we would have to do it.

(Mr. KERNS.) Is your Post Falls power plant connected up with your system of lighting in Spokane?

A. About the same way it is to the Coeur d'Alene through the other line. There is an emergency connection.

Q. You use power generated at Post Falls in the City of Spokane?

A. At certain seasons of the year we do; certain other seasons the reverse is the fact. We have to help out Post Falls with Spokane. We have had to do that.

Q. You made the remark yesterday that the dam at Post Falls furnished water for the flume. Is it a fact that the intake of that flume is slower than the overflow of the dam?

A. The opening from our work to theirs is at the

same elevation as the overflow from our flume—

Objected to.

Q. Answer my question, please, about the intake of the flume. How much higher is the level of the overflow of the dam with their trap lowered than the intake of that flume?

A. I think it is the same elevation.

Q. You think it is the same?

A. The overflow, yes, the weir is the exact elevation of the crest of our dam.

Q. Which weir?

A. The weir of the irrigation company.

(Mr. GRAY.) That is not the one he is inquiring about; the flume that takes the water to the Cable Milling Company.

A. That's the only flume I testified to.

(Mr. KERNS.) My question was directed to the irrigation flume which you spoke about yesterday.
[257]

(Mr. GRAY.) Objected to as improper cross-examination. He didn't speak of any irrigation flume yesterday.

A. You misunderstood my statement. I referred to the use of the power for pumping from this irrigation near Post Falls, the water to be taken from Hayden Lake and being pumped by electric power.

(Mr. KERNS.) Then I will ask you if there is a flume from a point just below your dam at Post Falls carrying water into the State of Washington, that flume being in the neighborhood of twelve feet wide and five feet high, what is the level of that flume as compared to the level of the overflow of your dam

with the bear-trap lowered?

Objected to as improper cross-examination.

(The COURT.) I think what he said was in regard to pumping. I don't think his statement was in regard to that, although I was at first under the impression it was.

(Mr. KERNS.) You say it was used for pumping. Have you entered into any contract for pumping? A. No, sir.

Q. The dam was not built with that in view, was it?

A. The dam was built with the view to generating power for sale to anybody who wished it at a uniform rate.

Q. As the demand for electric power continues to increase, what about the increase of the rate?

A. I suppose that the law of supply and demand will have its influence as in other cases.

(Mr. GRAY.) I object to the question of rate. I don't think it is a question that has anything to do with the effect of the dam. I move to strike that out.

(The COURT.) Motion denied. Exception.

(Mr. GRAY.) There is no such allegation at all in the complaint. I would like to have that stricken out until I can get my objection in to the question.
[258]

(The COURT.) It may be stricken out until you can object.

(Mr. GRAY.) I object to it as improper cross-examination not within the issues, not within any question to be heard or determined at this hearing, and as incompetent, irrelevant and immaterial.

Objection overruled. Exception.

(Mr. KERNS.) Then if your water supply for generating electricity is exhausted and the demand for electric power continues to increase in the proportion that it has increased in the past then your company will continue to increase the price of electric power, that price to be determined by the demand, will it not?

(Mr. GRAY.) Objected to as incompetent, irrelevant and immaterial calling for a conclusion, speculative. This witness does not know what his company is going to do in the future.

(The COURT.) I hardly think that is proper for this witness.

(Mr. KERNS.) I will ask the question in a changed form. If the demand for electric power doubled the demand you have now without any greater capacity to supply that demand, would the charge for such power be any greater than it is at present?

(Mr. GRAY.) Objected to as incompetent, irrelevant and immaterial. It is not shown that the witness controls the price or has anything to do with controlling it. Purely speculative; he don't know and can't know.

(Sustained.)

(Mr. KERNS.) Exception to both rulings.

Q. You have a supply of electric power that is not yet exhausted, have you?

A. No, sir, we are now up to our limit.

Q. When you complete the new plant the present year you will have additional power to the extent of that plant?

A. Yes, we will for a little while. We have a number of contracts, however, pending which will probably exhaust it very quickly. [259]

Q. This power from Post Falls is also used in the operation of an electric railway running in to the Palouse country, is it not? A. It is not.

Q. Has it ever been at any time? A. No, sir.

Q. Has it ever been?

A. Yes, I think on some occasions it has. It won't again, however, probably.

Q. If the mines in Coeur d'Alene should *cases* to take your power, what then would you do with it?

(Mr. GRAY.) Objected to as incompetent, irrelevant and immaterial, and purely speculative. This witness does not know and cannot know the plaintiff says it is for sale.

(The COURT.) I think I will sustain the objection to that.

(Exception.)

(Mr. KERNS.) Who is H. L. Bleecker?

A. Secretary of the company.

Q. Was Mr. Bleecker secretary of your company on the 24th day of November, 1908, if you know?

A. He was.

(Mr. GRAY.) Objected to as immaterial, not proper cross-examination; he cannot make his case on cross-examination.

(Mr. KERNS.) Is Mr. Bleecker present? Will he be called as a witness?

(Mr. GRAY.) I don't know whether he will or not.

(Mr. KERNS.) Do you know Mr. Bleecker's signature?

(Mr. GRAY.) Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

(The COURT.) It is preliminary question.

(Exception.)

A. I am not a handwriting expert; that looks like it. [260]

(Paper exhibited to witness, affidavit filed November 26th, 1909, in the case entitled 2721, Charles Water against The Washington Water Power Company.)

(Mr. GRAY.) I move this testimony be stricken out.

(Mr. KERNS.) I am going to introduce it when we come to introduce our side of the case.

Q. How much do you raise the level of the water of Lake Coeur d'Alene and Coeur d'Alene River by means of your dam at Post Falls?

A. About six and one-half feet above low water.

Q. What is the flow, the natural flow, of the water from Lake Coeur d'Alene to Post Falls in Spokane River?

A. It varies at different seasons of the year—different flow in the river.

Q. Take it at a low water stage.

A. What condition of the gates—gates open?

Q. With the gates open.

A. It would be in the neighborhood of three and a half feet.

Q. I understood you to say that when those gates

are closed, the bear-trap is up, you raise the level of the water from 2,116, and one-half to 2,126.5, is that correct? A. That's correct.

(Mr. GRAY.) What is that, from 2,116.5?

A. To 2,126.5.

(KERNS.) What is the distance from Post Falls to the Old Mission?

A. I never measured it. The map shows.

(Mr. GRAY.) Let me understand. You mean under present conditions.

(Mr. KERNS.) The distance between Post Falls and the Old Mission would be the same in the spring as in the fall.

(Question read referring to third question back.)

A. That may be or may not be correct; depends on the conditions. If the water was at an elevation just flush with the top of the gate, with the gate collapsed, it would be correct. [261]

Q. That is you mean raised?

A. No, sir, I mean open—down.

Q. It is 2,126.5 when it is down—when the gates are open—bear-trap down? A. It could be, yes.

Q. 2,126.5 when the bear-trap is closed so the water cannot pass? A. Certain seasons it is.

Q. Low water season I understood you to testify to 2,126.5.

A. That is partially correct when the water in the lake goes down to 2,127 or a little under we commence to close the gate, keeping the water at about that level. When we get the gates all closed the level is 2,126.5; it remains there a few days, but owing to the fact that we draw it out of the lake faster than it is com-

ing in the level falls as the season progresses.

Q. In the event of a storm or freshet in these mountain streams—Coeur d'Alene River and St. Joe River, with your bear-trap raised and your headgate closed, have you ever observed the effect of such on the raise of the river with the water raised to 2,126.5?

A. I have never seen any record of any freshet of that nature at the time we had our water up to that level.

Q. Were you in this country in November, 1909, when an exceptional high raise of water occurred in the Coeur d'Alene River? A. Yes, sir.

Q. Were you on the Coeur d'Alene River at that time?

(Mr. GRAY.) Objected to as not within the issues, the question of what may have occurred in connection with the use of the dam at that time. It seems to me that has nothing to do with the question of the public use or the necessity for the appropriation of this land.

(The COURT.) He may answer. Exception.
[262]

A. The flow of the river as I recollect now in November, 1909, and December is along the time that the river usually raises during the fall rain, and I presume that would be liable to occur at any time.

Q. I am asking you about a particular flood of last November.

A. No, sir, I was not on the river at that time.

Q. Since you have constructed Post Falls dam, have you made any reduction in the price of the electric power you furnished to the mines at Coeur

d'Alene or any of those towns?

(Mr. GRAY.) Objected to as immaterial and irrelevant, improper cross-examination, not within the issues in the case.

(Overruled and exception.)

A. I don't think we ever made any material change. The prices are pretty near down to rock bottom now.

Q. About to be raised, are they?

(Objected to.) (Sustained.)

Q. Have you with you any memoranda so as to show us how much power you delivered to the Coeur d'Alene mines in 1906? A. No, sir.

Q. Can you give me an estimate of the amount?

(Mr. GRAY.) Objected to as immaterial, incompetent and irrelevant, and not proper cross-examination. The question of what power might have been sent to Coeur d'Alene from Spokane in 1906 is entirely immaterial. If they are developing power in Idaho and selling it for public use in Idaho that is the question your Honor is going to determine.

(The COURT.) I am afraid the Court is going to consider some matters that counsel do not think proper in determining this. I am not prepared to say just what figure that would cut in the matter. He may answer.

(Question read.) [263]

A. No, sir, I have no memoranda. I don't recollect what the figure was.

(Mr. KERNS.) Do you know a man by the name of Al Kennedy?

A. Yes.

Q. Who is he?

(Mr. GRAY.) Object to who he is; if it is an impeaching question—

(Mr. KERNS.) It is not an impeaching question.

(Mr. GRAY.) I object to it as improper cross-examination.

(The COURT.) I think that is improper cross-examination.

(Exception.)

(Mr. KERNS.) Is it not a fact your dam, bear-traps, headgates at Post Falls constitute a complete obstruction to the waters of the river?

A. No, sir.

Q. It is not a fact? A. It is not a fact.

Q. In period of low water with that bear-trap raised and headgates set, is it possible for logs to float by your dam?

A. We have a log sluice put in there for the purpose of passing logs.

Q. Where is that? A. In the north channel.

Q. With reference to the bear-trap?

A. It is right next to bear-trap.

Q. Will you show us on these photographs where it is?

(Mr. GRAY.) Objected to as immaterial. If any logger wants to deliver logs down that river he can; there is a way by which you can have them taken down.

(The COURT.) He may answer. (Exception.)

(Mr. KERNS.) Look at Plaintiff's Exhibit "E."

A. It is the second gate from the bear-trap. It might be of interest to state that we have on a num-

ber of occasions during the [264] low water season afforded passage for logs of different lumber companies below Spokane and in a number of cases that those logs were held up by the flow of the river which at that time was greater than normal flow. We opened our gates and gave them a splash so their logs could go on down.

Q. In estimating the cost of creating electric energy, did you include the initial cost of your plant?

(Mr. GRAY.) Objected to on the ground that he has not attempted to estimate the cost of producing electrical energy. He testified what they had been selling for.

(Mr. KERNS.) Relative to the cost of producing steam electric power.

(Mr. GRAY.) Objected to. I am perfectly willing in all reasonable matters to afford your Honor information, but it seems to me that a fishing expedition is far from proper in any proceeding. What it cost the Washington Water Power Company is not a question—is not proper for investigation. These matters are matters that might be inquired into by public utilities commission, or something of that kind.

(The COURT.) The Court understood this witness to testify as to that very matter this morning. What was your statement?

A. I don't recollect what it was. I stated we were selling power in the Coeur d'Alenes to the mining companies for about three-quarters of a cent a kilowatt hour.

(The COURT.) What was the statement in regard to steam?

A. That a modern steam plant operated under favorable conditions in Spokane that the power could be generated perhaps for from one and a half to two cents per kilowatt hour.

(The COURT.) This question is not the cost of generating by water power.

(Mr. KERNS.) I asked what the basis of his calculation was as to his charges. [265]

(Question read.)

(Mr. GRAY.) Is that by steam?

(Mr. KERNS.) No, I am talking about electricity.

(The COURT.) He has not testified to the generation by water power, I think.

(Mr. KERNS.) I understood you to give an estimate of the cost of your plant at a million dollars?

A. Which one was that?

Q. Post Falls.

A. Yes, that's the power plant, in that neighborhood.

Q. The power you generate and sell from that plant, do you sell it at a uniform rate?

(Mr. GRAY.) Object to the question on the ground that it is improper cross-examination, irrelevant and immaterial, for this reason we know and counsel knows that the man who takes a large amount of horse-power naturally would be able to get it at a rate that they could not afford to deliver one horse-power for. This Court is not going to make rates in this proceeding.

(Objection sustained.)

(Exception.)

(Mr. KERNS.) I want to preserve the record and desire to ask another question on the same line.

(The COURT.) Very well.

(Mr. KERNS.) In estimating the cost of your power plant at Post Falls did you include the cost or amount of damage that will be occasioned by the overflow water caused by your dam?

(Objected to as immaterial.) Overruled. Exception.

A. The cost to which I testified did not include any cost of overflow, the original cost to which I testified. [266]

Q. Kindly answer my question.

(Question read.)

(Mr. GRAY.) Objected to. Object to interrupting the witness. He went so far—

(Answer read.)

(The COURT.) I think that answers the question.

A. That was the cost, not an estimate that I referred to.

(Mr. KERNS.) Did I understand the Court to rule that we were not to be allowed to ask the price they charge for electric power to the railroad company and to these subcorporations.

(The COURT.) Yes, that was the substance of what I held, I think. That was not exactly the question, but as I remember it that was the substance of the matter that that was not material to the inquiry here.

(Mr. KERNS.) Do you know the area of the farm land overflowed by reason of your raising the

water by making the Post Falls dam?

(Mr. GRAY.) Objected to as improper cross-examination.

(Overruled and exception.)

A. The amount of land lying below contour 2,128 which amount is greater than the amount we overflow is in the neighborhood, as I recollect it, of about thirteen thousand acres—slightly over thirteen thousand acres.

(Mr. GRAY.) I move to strike the answer out as being improper cross-examination. No such question was gone into on direct.

(The COURT.) You showed by this witness something of the examination of this land before the overflow.

(Mr. GRAY.) He said he made a reconnaissance up the rivers.

(The COURT.) Yes. Motion denied. (Exception.)

(Mr. KERNS.) Does that include the land in the Coeur d'Alene Indian Reservation? [267]

A. Yes.

Q. Also the state lands of Idaho?

(Mr. GRAY.) Objected to as immaterial, irrelevant and incompetent and not proper cross-examination.

(Overruled and exception.)

A. It includes all of the land. I think some twelve thousand of this acreage—over twelve thousand—we have acquired there in fee or easement.

(Mr. KERNS.) You have testified that the increased demand for electric power—

A. I believe so.

Q. Was from twelve to thirty-three per cent per annum? A. Yes.

Q. Where does this demand for power come from?

A. Oh, it comes from different parts.

Q. What parts? How much of that demand comes from the State of Washington?

A. Oh, I could not tell you exactly.

Q. A considerable portion of that amount is a demand from that state, isn't it?

A. No, sir, I should think it would be fairly uniformly distributed; if anything, I would think a larger percentage of that, especially the large amount of the higher percentages were due to the increase in the Coeur d'Alenes—very much the largest part.

Q. That has been happening how many years?

A. That has happened—let us see—since we have been there in 1903—

Q. The demand from the Coeur d'Alene mines last year in 1909 increased twelve per cent?

A. I could not give you that exactly, I have not got the figures.

Q. Did it increase in 1908 twelve per cent?

A. I don't think it did, no. [268]

Q. Did the demand from any other source in Idaho increase twelve per cent in 1908?

A. Yes, I think the demand from Coeur d'Alene, I think, although I would not be sure of that—I have not got those segregated—I could not tell you offhand.

Q. Are you acquainted with the demands for elec-

tric power from the Coeur d'Alenes?

A. In a general sort of a way.

Q. Are you acquainted with the possible future demands?

A. I couldn't answer. I cannot tell you what the future will hold in a mining camp.

Q. How many applications for electric power have you had from Coeur d'Alene mines in the last six months?

A. I could not give you that offhand.

Q. Have you had any?

A. We have had a number of inquiries. I could not give you the exact number of names.

Q. Is it not a fact that most of the contracts you have made for furnishing electrical power at the Coeur d'Alenes have been renewals of old contracts?

(Mr. GRAY.) Objected to as immaterial. The Court applies some general knowledge to those things—knows that any country that is settling up the demand increases.

(The COURT.) He can find out if he wants to where the increase comes from.

(Mr. GRAY.) Objected to as incompetent, irrelevant and immaterial.

A. All the old contracts have been renewed; of course the year 1908 was a pretty dull year up there, prospecting was checked very severely so that additional new customers were rather few that year.
[269]

Q. From what source did this other portion of the increased demand come?

A. It came about in the natural growth of the

community as a whole.

Q. What community?

A. The community in this country—section.

Q. Any portion of it comes from the State of Washington? A. Oh, yes.

(Mr. GRAY.) Objected to on the ground that we admit there are demands from Washington and are increasing. We are putting in electric power there.

(Mr. KERNS.) Do you admit that portion of this thirty-three per cent increase in the demand comes from the State of Washington?

A. I should think increase would be spread out roughly about the same. The percentage of increase in lighting, especially in the best lighted districts in Spokane has been very small, indeed, due to the introduction of the Tungston lamps practically knocking that increase down to zero.

(Mr. KERNS.) When did you make this estimate of the increase of the demand from twelve to thirty-three per cent per annum?

A. It is not an estimate, it is an actual figure.

Q. What are the actual figures? Did you make that statement? A. We keep a record of that.

Q. Have you a memoranda of that record with you? A. Yes, I have.

Q. Read the increase from Idaho.

A. I have not got that.

Q. Then read what you have from total sources?

A. The increase in 1905 from 1904 was thirty-three and one-third per cent. The increase of 1906 over 1905, the same. The increase of 1907 over 1906 the same. The increase of 1908 over 1907 is nine-

teen and one-half. The increase of 1909 over 1908 is twelve [270] and one-half. The increase this year to date is running about sixteen per cent.

Q. Can you tell from the memoranda you have from what source that increase comes?

A. No, sir, I could not tell you.

Q. Don't know whether from Idaho or Washington? It is a fact you are seeking to preserve Lake Coeur d'Alene as a reservoir or storage basin, however, in order to furnish permanent supply of water for the low-water season to your Spokane and other power dams, is it not, during the low-water season?

(Mr. GRAY.) Objected to. Witness has testified entirely to the fact and I think this is immaterial and irrelevant, incompetent, improper cross-examination and not within the issues in the case.

(The COURT.) He may answer.

(Exception.)

A. I stated that a few minutes ago, just what the figures were.

(Mr. KERNS.) That is a fact, isn't it?

A. The water which is conserved in the lake is used to any avail that may be developed on the river at Post Falls or other points.

Q. And it is used by these plants of your company, is it not?

(Mr. GRAY.) Objected to as improper cross-examination, incompetent, irrelevant and immaterial. He has testified to exactly what extent their other plants are benefitted.

(The COURT.) He may answer.

(Exception.)

A. That stored water would be—could be used at the plant in Spokane.

Q. It is used as a fact? A. It is. [271]

(Mr. GRAY.) Objected to upon the ground as improper cross-examination, irrelevant and immaterial.

(Mr. KERNS.) We don't want to put anything in this record that will spoil our chances. We are as anxious as counsel to keep the record clear.

(The COURT.) I don't suppose there are any errors in the record.

(Mr. GRAY.) Not any I have put in.

(Mr. KERNS.) Answer that question again, please.

(Question read.)

A. The stored water increases the capacity of Post Falls plant by ninety per cent in the low-water season and the bear-trap is put in there primarily for the Post Falls plant.

(Mr. KERNS.) That does not answer my question. That additional flow caused by the stored water during the low-water season incidentally does benefit to some extent—not anything like that proportion—the flow at Spokane and the power accordingly.

Q. And also your other power plant further down the river?

A. We did not put the dam in there primarily to help out Nine Mile plant or any plant built by anybody else.

(Mr. GRAY.) There are plants along the river other than the plants used by The Washington

Water Power Company, aren't there?

A. There are.

Q. They are incidentally benefited the same as The Washington Water Power Company?

A. They are.

Q. They did not contribute to the construction of the dam? [272]

A. No, sir.

Q. Have anything to do with it?

A. No, sir.

Q. Did you say that if the bear trap was collapsed that the level of the water could be held to 2116.5?

A. It might be under certain conditions if it were possible to get the normal flow of the water at that season through the water wheels it might be possible to keep the water flush there; I don't believe it would be possible.

Q. Has it ever been done?

A. No, sir.

Q. As a matter of fact, the head of the water above that dam would be the crest of the water?

A. Yes.

Mr. KERNS.—Are any of those other power plants or dams in Spokane River, in Idaho?

A. Not that I know of; there is none at present.

Q. Dams, you answered, in relation to, in answer to Gray's questions, are dams situated in the State of Washington.

A. There is a dam at the city of Spokane, a dam at Nine Mile which furnishes the power for the electric line running in to Palouse and into Moscow, Idaho.

Q. They are both down below Spokane, are they?

A. One is at Spokane, the other is below.

Q. But they are in the State of Washington?

A. Yes.

The COURT.—In regard to that plant at Nine Mile, that belongs to the Spokane railroad company? A. Yes.

Q. Is that company interested in any way whatever with your company in the condemnation of these lands? [273]

A. That I do not know, Judge.

The COURT.—The question is prompted largely by a statement I saw in the paper the other day attributed to an engineer of the Spokane Inland Railway Company in his testimony to the effect that they would not have completed the dam to the capacity it was, had it not been for this reservoir.

Mr. GRAY.—I never heard of it.

The COURT.—With the dam as you have it now at Post Falls, these concrete piers of the height they are can you arrange to raise the water any higher than you have done with the bear-traps without raising the dam higher? A. No, sir.

Q. What is there, if anything, that would prevent you from raising that dam and increasing the depth of the water through this reservoir if you finally have the right to condemn the land?

A. The substructure of the bear-trap, in fact, all of the dams there are calculated and designed for that head of water and they would be severely overstrained if you should increase it.

Q. Is there anything to prevent you, if you should

acquire the right to do so to raise that dam a considerable height above what it is now or build another dam that would be a considerable height above this and raise the water some distance above what you have been able to raise it or could raise it?

A. That would not be feasible commercially or physically with the present structure.

Q. But not impossible with the present structure?

A. If those structures were removed and larger, wider, and higher dams were put in and the whole thing was built over, you could build up higher.

Q. Suppose you acquire the right to this land and other land [274] that you might need in order to make a permanent reservoir with the dam there, what is there, if anything, to prevent you then from building a dam still higher or building another dam and increasing the capacity of your reservoir indefinitely?

A. The commercial aspect of the situation would prevent that. It would be entirely wrong for the present investment to make a new investment. The present dam would have to be replaced.

Q. It is a matter of investment and nothing else?

A. It would not be a feasible commercial proposition.

Q. That is the only thing in the way?

A. I think that would be the only thing. If you wanted to spend enough money, you can do pretty near anything.

Q. I mean the physical difficulty, if any, in the way of increasing the capacity of this proposed reservoir by raising the dam and flooding additional land?

A. You could not raise the dam without endangering the stability of it because they are not designed for that. You could take the dam away entirely and remove it and build a new one higher and thicker and heavier throughout, but you could not use that in connection with the present work.

Mr. GRAY.—It would interfere with the rights now operating?

A. Yes.

The COURT.—That's what I want to get at, anything in the physical conditions that would prevent a very material increase in the depth of this water with that purpose to put in the reservoir?

A. I presume we would be estopped by the O. R. & N. railroad and probably the Milwaukee. I don't know what the elevation of the Milwaukee is, but I am satisfied the O. R. & N. would interfere. They were considerably stirred up at the time we put the dam in and they made an exhaustive examination. They were flooded out, I [275] think, in '94, they were entirely flooded out for some time.

Q. Where are you building this plant you say you have in progress of construction now?

A. That is at a place known as Little Falls about fifteen miles north of Reardan.

Q. How far from Spokane?

A. By the transmission line, about twenty-eight and one-half miles.

Q. You say you have about how much capacity there?

A. We will have part of that plant in operation next fall or early winter, if we have good luck.

Q. How much capacity?

A. We are putting in at this time, we expect to have the first unit of five thousand kilowatt in operation.

Q. What was the low-water capacity of the plant when completed?

A. The low-water capacity with storage nineteen thousand horse-power.

The COURT.—I have a note here that indicates that you stated that the increased power down there would be about six thousand horse-power by reason of the reservoir.

A. Five thousand four hundred with the complete installment.

Q. You get about fifty-four hundred by addition of the reservoir? A. Yes.

Q. With the plant you have in Spokane and what you propose building there, this reservoir would give you about twelve thousand horse-power?

A. Yes, with the proposed works we gain about twelve thousand one hundred.

Q. Has your company now any more power sites on the Spokane River below Spokane? [276]

A. No, sir.

Q. What about the steam plant you speak of in Spokane, what is the capacity of that?

A. The capacity of the steam plant is about fourteen thousand kilowatts.

Q. Is that in operation all the time?

A. No, sir.

Q. Was it not built originally to supplement your power plant at Spokane in low water?

A. It was built to supplement part of the power at low water; it was primarily built as a stand-by service in case we broke down any part of the hydraulic apparatus.

Q. You don't run that regularly? A. No, sir.

Mr. GRAY.—If you were not to store water in Lake Coeur d'Alene could you supply the demands for electric horse-power by generating water power which is required for the use of the Coeur d'Alene mines? A. We certainly could not.

The COURT.—Your steam plant would be about twenty-thousand horse-power, approximately?

A. About nineteen thousand.

Mr. KERNS.—Q. You did, however, furnish Coeur d'Alene mines with electric power prior to the building of Post Falls dam? A. Yes.

Q. Four or five years? A. No, sir.

Q. 1903 to 1907?

A. 1903 to 1906, I think, three years.

Q. When did you finish building the building at Post Falls dam? [277]

A. August 30th the bear-trap dam was raised first time in 1906.

Q. Was that the completion of the construction of the dam? A. Yes, sir.

Q. Has the bear-trap been up all the time since that? A. No, sir.

Mr. GRAY.—The power that was furnished to the Coeur d'Alene mines originally from Spokane was furnished only in contemplation of the development at Post Falls to supply them?

A. That is true. As a matter of fact, we rushed

the construction at Post Falls with all possible speed as the summer before we had an actual shortage and we had unfortunately to shut down the mines at periods of the day. We did that for considerable periods during the low-water season we were actually short of power.

Q. The power could not be transmitted from either practicably when you have a power line here where the loss is so much less?

A. The distance is so much greater from Spokane with anything like the present load the loss of the line would be such as to make very poor—give very poor service. The regulation of the use of the line would be such that the difference in the pressure in the lines for instance between a light load and a full load would be very great, and the full load lights would be burning very dim, the voltage would be low so the motors would not operate satisfactorily.

Q. And if the demand was sufficient in Washington to take up your power generated it would be impracticable from a commercial and business standpoint or a practical electrical engineer's standpoint to transmit it so far? A. It would.

Mr. KERNS.—What is the distance of your line from Post Falls to Coeur d'Alene mines?

A. I think about eighty-six miles. [278]

Q. From Spokane to Coeur d'Alene?

A. About 101 miles.

Mr. GRAY.—Your company stands ready and willing to sell power to customers in Idaho as long as it has it, from Post Falls? A. Yes.

Mr. KERNS.—By what authority do you make that statement?

A. By the known policy of the company.

Q. You are not authorized by the board of directors or trustees of that company to make that statement?

A. I know by experience their policy in such matters.

Mr. GRAY.—The complaint alleges we do.

A. I am authorized to enter into negotiations for any additional amount of power that may be required here.

Q. From your Post Falls plant? A. Yes.

Q. How much additional power have you at that plant?

A. Right now we have about—at the present time three or four thousand horse-power.

Q. What did you do with it?

Mr. GRAY.—Objected to as immaterial, incompetent and irrelevant. I have some authorities upon that question. As long as they are supplying us if they have a surplus they can use it or let it go to waste whichever they want.

The COURT.—I think he can answer the question.

(Question read.)

(Exception.)

A. At the present time we have still a slight excess of power available at Post Falls. At low-water periods it is not true. The fact is the river is now greatly in excess of low water.

Q. What are you doing with the excess of power?

A. We are keeping it available for our customers.

[279]

Q. Not using it at all? A. No, sir.

Q. If you should to-day enter into a contract to supply someone in Washington with that excess power three or four thousand horse-power, do you contend that you could rescind that contract at will in order to deliver the same power to some man in Idaho and that your company would so rescind it?

Mr. GRAY.—Objected to as speculative and a legal conclusion. Witness don't know. He is not a lawyer.

The COURT.—If witness can answer, he may so do.

(Exception.)

A. In making such probable contract we would not do so unless we could see some other means of making up the deficiency when the Post Falls plant was unable to furnish it. If we could not do that we would not be able to enter into the contract. If we could get a customer who would use the power during flood-water season, we would be glad to do business with him and make him a very low rate for it.

Mr. KERNS.—You don't exactly answer my question. I asked you if your company had entered into a contract with someone in Washington for that excess power that you contend that you would have the right to rescind that contract so as to give the power to someone else.

(Objected to as incompetent, irrelevant and immaterial and speculative.)

The COURT.—He may answer that.

(Exception.)

A. I have answered it as well as I know how.

Mr. KERNS.—Would your company have a right to rescind a contract with a resident of Washington?

[280] A. I am not a lawyer.

Mr. GRAY.—Objected to on the ground it calls for a legal conclusion.

The COURT.—Yes.

Mr. KERNS.—Then there is a clause in your contract authorizing you to, or by which your contract to furnish power is subject to such restriction by which your company can rescind the contract?

Mr. GRAY.—Objected to upon the ground he is talking about some contract that has been made; speculative, improper cross-examination, incompetent, irrelevant and immaterial, no foundation laid for such a question. There is no proof that there is any contract for selling power generative.

The COURT.—He may answer it.

(Exception.)

A. I don't recollect any such case.

Q. You don't know of any such case?

A. No, sir.

Mr. GRAY.—Nor any such contract?

A. No, sir.

Mr. KERNS.—Do you have anything to do with making contracts in behalf of The Washington Water Power Company to supply electric lights?

A. That is not my specific work, no, sir.

Q. Do you know anything about it? A. Yes.

Q. Isn't it a fact all your contracts contain a clause that you will agree to furnish this power named in

310 *The Washington Water Power Company vs.*
the contract subject, however, to prior rights and
obligations, of any of other users of electrical energy?
[281]

A. In Shoshone County, is it not?

Mr. GRAY.—Objected to as improper cross-examination.

Mr. KERNS.—Yes, Shoshone County.

The COURT.—He may answer it if he can.

(Exception.)

A. If I understand your question referring to sale of some power in Washington, I don't recollect any such clause, and I don't think there is any.

Q. This clause is in the Shoshone County contracts, is it?

A. It looks as though it was if it mentions Shoshone County.

Q. That clause is in the contracts you have for the supply of electrical power in Shoshone County, is it not? A. I could not tell.

Q. Do you say it was or was not?

A. I said I could not tell.

Q. You say you cannot tell me; you don't know?

A. No, sir.

Objected to as an argument between counsel and the witness.

The COURT.—He has answered it.

Witness excused. [282]

C. S. McCALLA, recalled by Court, testified as follows:

(COURT.)—Is this 6½ feet above low water as high as you ever raised the water in the lake or river by the bear trap?

A. Yes, within a very few inches.

Q. Is it practicable to raise the water substantially the full height of the bear-trap, 10 feet?

A. No, sir; physically impossible.

Q. How near can you come to it?

A. About $3\frac{1}{4}$ feet. The base of the bear-trap, that is, the crest of one gate when it is open or collapsed, is about $3\frac{1}{2}$ feet below the low water at the gate; the gate has a total raise of 10 feet; the amount of water above the water of the lake is the difference between $3\frac{1}{2}$ and 10 feet.

Q. The bear-trap collapsed is about 3 feet below low water?

A. Below the lake low water; the low water of the lake is about 2120 and the elevation of the bear-trap collapsed is 2116.45.

Q. I understand you have raised the water as high as practicable to raise it with the bear-trap?

A. Yes, sir; we have. Our employees at Post Falls have instructions to watch the flow of the water over the bear-trap in order to protect it from damage in case the water should flow over there; the gate is not designed as a spillway; if a material amount went over it it would not be endangered. As soon as that condition is approached, they have to open the Tainter gates and other gates, and when water level gets beyond control, we collapse the bear-trap.

Q. What are the Tainter gates named from, the inventor? A. A man by the name of Tainter.

(Witness excused.) [283]

**Certificate [of Counsel Re Transcript of Testimony,
etc.].**

State of Idaho,

County of Kootenai,—ss.

I, M. D. Barstow, hereby certify that I am the regular Court Reporter for the District Court of the Eighth Judicial District of the State of Idaho, in and for the County of Kootenai, and that I was such Reporter and reported the case tried in said Court, entitled *The Washington Water Power Company*, a corporation, Plaintiff, versus *Charles Waters, Bertha E. Waters and Sabastiano Demicco*, Defendants; that the following testimony is a true, full and correct transcript of the testimony of witness C. S. McCalla, who was called and sworn as a witness on behalf of plaintiff in said case; that said transcript was taken in shorthand by myself and that I personally transcribed the said testimony from my original notes made by me at the time the said testimony was given in said case.

Dated this 31st day of December, A. D. 1912.

M. D. BARSTOW,

Official Court Reporter, 8th Judicial District of
Idaho.

[Endorsed]: Filed January 7, 1913. A. L. Richardson, Clerk. [284]

*In the United States Circuit Court of Appeals, Ninth
Circuit.*

No. 535.

WASHINGTON WATER POWER COMPANY,
a Corporation,

Complainant and Appellant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants and Respondents.

**Statement of Evidence to be Included in Record
on Appeal.**

The above-entitled cause came on for trial and hearing before the Honorable FRANK S. DEITRICH, United States District Judge, for the District of Idaho, at Coeur d'Alene, Idaho, in the Northern Division of the District of Idaho, on the 2d day of August, 1912, said Judge sitting without a jury. The following appearances were made: Mr. Frank T. Post and Mr. John P. Gray appearing as solicitors for complainant and Mr. N. D. Wernette, County Attorney, and Mr. R. H. Elder appearing as solicitors for the defendants.

Thereupon the following witnesses were called, sworn and examined, and the following proceedings had in said cause:

[Testimony of A. J. Wiley, for Complainant.]

A. J. WILEY, a witness called and sworn on behalf of complainant, testified as follows, on

Direct Examination.

(By Mr. GRAY.)

My name is A. J. Wiley; my occupation, civil engineer; [285*—1†] residence, Boise, Idaho. I was educated at Delaware College, Delaware, and I have been practicing my profession since, for about twenty-nine years. I have been engaged in hydraulic and power engineering for this period. For the last ten years I have been largely engaged in hydraulic power development. In that period I have been chief engineer of the Swan Falls Power Company, for about three years, and consulting engineer for the same company for seven years. Its property is located at Swan Falls, on the Snake River, about 30 miles south of Boise. I have been chief engineer of the Boise-Payette River Electric Power Company, which property is located on the Payette River about 30 miles north of Boise, Idaho. I have been chief engineer for the Boston & Idaho Gold Dredging Company of the electric power plant there, located on the Payette River, near Pioneerville, Idaho. I have been chief engineer for the Barber Lumber Company, whose electric power plant is located on the Boise River about seven miles above Boise. I have been chief engineer for the Idaho Consolidated Mining Company, whose power plant is located near

*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Testimony as same appears in Certified Transcript of Record.

(Testimony of A. J. Wiley.)

Bellvue, Idaho. I have been consulting and designing engineer for the Great Shoshone & Twin Falls Water Power Company, whose plants are located at Shoshone Falls, Lower Salmon Falls, and Upper Salmon Falls, of the Snake River. I am consulting and designing engineer for the American Falls Power Company, whose plant is located at American Falls on Snake River, near Pocatello, Idaho.

In the course of my experience, I have resigned and constructed a great many power plants. I consider myself intimately acquainted with the power plant of the plaintiff situated [286—2] at Post Falls, Idaho. I first examined it on July 1st, 1912, for the purpose of making an estimate of the cost to reproduce. I made such estimate as largely as possible entirely independent of the records of the company. For this purpose I made an itemized estimate of the cost to rebuild the plant, based upon an examination of the plans of the company, the original records of the engineers, including the profiles and the record books; I computed the yardage of excavation and of concrete, and the amount of steel, the cost of all hydraulic and electric equipment, and, in general, the cost of everything that went into the construction of the power plant. The records of excavation and of concrete are practically independent of the company's records, except that the original engineering data of the company was used and my own estimates of cost per yard—per unit of the various items was used. The cost of machinery was obtained by going back to the original records of the

(Testimony of A. J. Wiley.)

company, including the original proposals of the machinery houses that furnished the machinery, and, in general, I made the estimate as nearly as I could exactly as if I had been making it for a new reconstructed plant. When I used the term "Plant" I included all items of construction at the Post Falls plant, including the dams, the buildings and the machinery necessary for the generation of the power. I made inquiries as to the cost of labor and material in the vicinity of Post Falls and this section and found them to be practically the same as that in section of Idaho with which I am more familiar, the southeastern part. It was necessary for me to go to the original engineering data and profiles and plans of [287—3] the dam for the purpose of determining the excavation and other work that went into that because it is impossible at this time to tell what the contour of the ground was at the time of construction. The cost of reproduction of that plant according to the estimates which I made, exclusive of right of way is \$954,170.79. The south channel dam, \$30,529.00; the north channel dam, \$110,836.06; the middle channel dam, \$184,906.02; the power-house building, \$134,556.28; the power-house machinery, \$422,155.53; the high tension building and equipment, \$60,325.26; the storeroom building, \$1,490.87; the cottages, \$8,052.60; the patrol-house, \$1,319.17; total, \$954,170.79. So far as the machinery item is concerned, it was not necessary to have any plans or specifications to determine whether or not that item was correct; I did compare it to see whether it was a

(Testimony of A. J. Wiley.)

reasonable cost or not, although I took the company's cost, as determined by the original records, as being correct, or nearly correct. I found the company's cost to be a reasonable cost; I considered it an average cost. It was necessary for me to have the profiles and records for the purpose of determining the cost of the power-house building, and the dams and the high tension buildings, the cottages, patrol-house and storehouse, I took from the company's records as being the best evidence; they are a small amount, anyway.

In investigating those costs, those expenditures made for those various items were in my judgment reasonable. The item which I have given of \$954,170.79 represents the reproduction in the original conditions, in other words, new. Based upon its cost, new, according to the estimates which I have made, I estimate the present value of that plant at [288—4] \$822,402.79. I account for the difference between the sum \$954,170.79 and the \$822,402.79 for allowance made for depreciation. Depreciation is an allowance made for the ordinary deterioration of a plant due to age, over and above its maintenance and up-keep, whereby in the period of the life of a plant it becomes totally depreciated so that it is no longer capable of performing the functions for which it was intended. On the dams I allowed a depreciation of 2% per annum, on the power-house and other buildings, 3%, on the machinery I allowed 5%, on the high tension equipment

(Testimony of A. J. Wiley.)

I allowed 4%. The high tension equipment is not given separately in the estimate, it is included with the buildings; the item of \$60,325.26, the depreciation which I allowed on each of those items, in my judgment was a reasonable value and customary depreciation. The cost of the reproduction of the dams could be estimated by me by the use of the profiles of the river; it would be a matter of calculation by use of the profiles and the plans together, and by using the profiles and the plans for determining the cost, the figures I have given as the cost of those various dams and the excavations for them can be determined; and I consider the figures which I have given as the cost of those dams in the several channels reasonable figures based upon those profiles and plans. The entire plans of the power-house, including the entire foundation plan, and including the profiles of the original river channels, were necessary for the purpose of determining the reproduction cost of that, and with those the cost can be determined. They are the records I used in determining the cost which I have given, and from those plans and profiles I found the cost as given to be a reasonable cost. With [289—5] reference to the machinery I used the original records of the company, the bills of lading and the original proposals received from machine companies, and in my judgment the cost of the machinery, from an examination of the machinery itself, given by me is a reasonable cost. The original records and proposals which I have referred to show that machinery to have cost new, the sum which I have given.

(Testimony of A. J. Wiley.)

With reference to the high tension building I used the original records of the company in determining the foundation and excavation; that is the profiles, and I used the plans of the company for determining the amount of concrete and steel entering into the construction, and for the cost of the high tension equipment I used the records of the company as being better evidence. Without considering the records, the sum paid and which I used in getting up my costs of the high tension building and equipment, was a reasonable cost; the cottages and small buildings are for the employees; I used the company's records and checked that with my previous experience in building similar cottages. I think the cost of those given by me to be a reasonable cost.

[Testimony of John B. Fiskén, for Plaintiff.]

JOHN B. FISKÉN was then called as a witness on the part of the plaintiff and after being duly sworn testified as follows, upon

Direct Examination.

(By Mr. GRAY.)

My name is John B. Fiskén. I am superintendent of light and water of the Washington Water Power Company. I reside at Spokane. I graduated from the London Technical Institute in 1886. I spent a year on Puget Sound and Vancouver and [290—6] Victoria doing various jobs of construction and operating; six months of that time was operating the plant at Victoria. I came to Spokane 25 years ago yesterday, and I have been connected with elec-

(Testimony of John B. Fisk.)

trical work in Spokane ever since, both operating and construction work, but for the last few years on operating alone. I have been in my present position about 24 years. I have to see that the Post Falls plant of the plaintiff is kept running, and see that the operating and maintenance costs are kept down. I have not had charge of the plant entirely since its construction, it was operated by the construction department for about six months before it was turned over to me, about the beginning of 1907. The charges of operation are passed by me before they go on the books, I know what the cost of operation for the year 1908 was. Included within the cost of operation are the wages of the operators and such small items as supplies for the station, wires and waste. In the year 1908 there were nine operators and occasionally extras. I can't tell the extras without referring to the books. The cost of operation for that year would run from \$8,600 to \$8,900; that does not all appear on one ledger or book, but on several. The exact cost of operation for the year 1908 of the Post Falls plant was \$8,621.85, the power which was developed was distributed in Kootenai and Shoshone Counties, Idaho, and Spokane County, Washington.

The cost of operation of the high tension lines in Shoshone County during the year 1908 was \$3,900. I also have charge of the distribution of that power. We distributed in Shoshone County 22,534,397 kilowatt hours. The line loss on delivering that power was 2,253,439 kilowatt hours. We [291—7] de-

(Testimony of John B. Fisk.)

livered to the Coeur d'Alene & Spokane Railway at Post Falls 4,776,000 kilowatt hours. We delivered to Mr. Martin of Post Falls 246,415 kilowatt hours. We delivered to Mr. Strathern, of Post Falls, 1,106,-281 kilowatt hours. To the Kootenai Power Company at Post Falls 1,865 kilowatt hours; a total of 30,918,397 kilowatt hours; the total output of the Post Falls plant that year was 40,399,000 leaving an excess at the switchboard of 9,480,603 kilowatt hours; that was sent to Spokane, the line loss in sending to Spokane would be 10% on 9,480,603 kilowatt hours, leaving delivered at Spokane at the substation there, 8,532,543 K. W. hours; that has to be converted and there would be a loss in conversion of about 25% or 2,133,136 K. W. hours, leaving the net delivered 6,399,407 K. W. hours.

The operating expense at Post Falls for the year 1909 was \$8,756.38; the operating expense in Shoshone County, \$3,900; the output of the Post Falls Plant for the year 1909 was 24,040,306 in Shoshone County delivered at the customers premises, at the mines. The line loss on that power was 2,404,030 K. W. hours, 10%; that is a fair estimate of the loss; that line from Post Falls to Wallace is about 65 miles; some of the power is taken off before it gets there other goes beyond. The Coeur d'Alene & Spokane Railway received 5,110,000 K. W. hours. Mr. Martin 247,926; Mr. Strathern, 1,279,819; the Kootenai Power Company, 12,794, a total of 33,094,875 K. W. hours, delivered in Idaho; the total output of the plant that year was 49,043,000; the ex-

(Testimony of John B. Fiskén.)

cess at the switch board after deducting the amounts distributed in Idaho, was 15,948,125 K. W. hours, which was sent to Spokane, the line loss in sending was 1,594,812 K. W. hours, leaving [292—8] a total delivered at Spokane at the substation there, 14,353,313 the loss by conversion was 3,588,328, leaving a net delivered there of 10,764,985.

The cost of operation at Post Falls in 1910 was \$8,819, the cost of operating in Shoshone County was 3,953; the power developed and distributed for the year 1910 in Shoshone County, 28,409,826; the line loss, 2,840,982; to the Coeur d'Alene & Spokane Railway, 6,068,200; to Mr. Martin, 7,613; to Mr. Strathern, 1,443,447; to the Kootenai Power Company, 22,318; a total distributed in Idaho of 38,992,386.

The total output of the plant that year was 57,127,000; the excess at the switch board over that distributed in Idaho, 18,134,614; that was sent to Spokane, the line loss was 1,813,461, leaving delivered at Spokane 16,321,153 K. W. hours, the loss by conversion there was 4,080,288, a net delivered at Spokane of 12,240,865. Witness temporarily excused.

[Testimony of C. F. Uhden, for Plaintiff.]

C. F. UHDEN was called as a witness on the part of plaintiff, and after being duly sworn, testified as follows, on

Direct Examination.

(By Mr. GRAY.)

My name is C. F. Uhden. I reside at Spokane, Washington. I am an electrical engineer. I graduated from the Washington State College in 1906,

(Testimony of C. F. Uhden.)

since which time I have been with the Washington Water Power Company. The first plans for the Post Falls Dams were started in the fall of 1903; the construction actually began in the spring of 1904; the first unit was operated in July, 1906; the map which I hand you clearly shows the property of the Washington Water Power Company [293—9] situated at Post Falls. This shows that the river divides into three channels which we designated as the South channel, the middle channel and the north channel. There is also a small channel leading off from the north channel, which supplies water to an irrigation system. We have a dam and gate at this point, and that small channel is the one that was used at the time the old cable mill was supplied with water-power, and we have also put in a dam and gate at that point. I have been with the company during the entire construction of that plant and during its operation since construction. I had charge of the construction of the plant. I was superintendent of the construction work.

(Document marked "Plaintiff's Exhibit #2.")

(Witness continues:) That document gives the reading of the work order, and also the number of it; that is a sample of some 125 or 130 work orders which I opened on this job. After having obtained that slip I am authorized to make requisitions upon the supply department or purchasing agent for any materials which I want, which material is entered upon the slips, of which these are carbon copies. I

(Testimony of C. F. Uhden.)

haven't the original slip with me; that is a carbon copy of it.

(Document here marked "Plaintiff's Exhibit #3.")

WITNESS.—Exhibit #3 shows the material and labor in connection with these work orders, which is #3650; these original slips are filled by the auditor. The carbons are sent up to me so I have a carbon copy of every cent that is spent in connection with this job. Those carbon copies, or those tickets are closed, totaled at the end of every month and are transferred to what we call the work order ledger, of [294—10] which this is a sample sheet.

(Sheet produced marked "Plaintiff's Exhibit No. 4.")

WITNESS.—From that sheet they are transferred to subsidiary ledger of which sheets are a sample.

(Sheet here marked "Plaintiff's Exhibit No. 5.")

WITNESS.—These being sheets of the ledger which show the different account numbers, according to the company's classifications. From there they are entered into the general ledger which shows the different accounts which the company has according to classifications. They are entered there into the general ledger, each work order and each piece of material and each particular labor or time slip which is issued follows through in the same way into the general ledger; the method I explained takes care of all material. The labor is distributed, daily slips are made out by the foreman on the job, who turns in

(Testimony of C. F. Uhden.)

the slips to the timekeeper, and the timekeeper enters the items upon these slips, which we call time sheets.

(Document here marked "Plaintiff's Exhibit No. 6.")

WITNESS.—From these yellow sheets the time is placed upon the payroll sheets, which gives the total of the payroll for each month; that is shown by this sample which I have here.

(Document marked "Plaintiff's Exhibit No. 7.")

WITNESS.—These yellow sheets also show work order number in the left hand column, to which every hour of labor is distributed according to the work order numbers. Every item is placed according to its work order number, upon this sheet here which [295—11] shows the amount charged to every particular work order.

(Document here marked "Plaintiff's Exhibit No. 8.")

WITNESS.—Which gives the distribution, and the labor as shown upon the first sheet in connection with these work order copies which I showed you, and the total from there, as I described before. The total is taken from there and put upon the work order sheet and so on until it gets to the proper ledger; it is then carried into the general ledger from those. During the construction the costs were carried for the various items in just that manner. As I remember, there were between 125 and 130 work orders. I have gone through those items, checked them up and know what the property costs; the total cost of the

(Testimony of C. F. Uhden.)

plant according to my own figures from the carbons furnished me by the auditor was 1,068,773.01; that includes the land outside of the land the buildings, construction, machinery and the dams, would be \$959,500.57; the south channel dam complete costs \$24,930.20; the north channel dam complete cost \$107,132.46; the middle channel dam cost \$188,036.40; buildings, \$185,299.95; machinery, \$425,786.41. In constructing the plant I segregated the cost of the several dams and carried them along separately. I made no totals until the completion of the plant; yesterday and the day before I segregated them; and those work figures I have given. I included the railroad spur and bridge in the \$959,500.00 item. The amount of that was \$19,795.39; this railroad spur and bridge was put in for transporting the machinery and other materials to the plant site for the middle channel; in the course of the construction work, it has not been used since the installation of the last unit in August, 1908. The bridge was a [296—12] combination bridge, wood and iron; the track was single steel rails; the bridge is still there but the track is not. I considered the question of interest on construction, \$34,570.79; it is included in the total; the railroad spur and bridge are also included in the total; the cost of the cottages was \$8,519.76, which makes my total \$959,500.57; that is the original cost of the plant.

[Testimony of John P. Gray, for Plaintiff.]

JOHN P. GRAY was then called as a witness for the plaintiff, being duly sworn testified, on

Direct Examination.

(By Mr. POST, as follows:)

I am one of the attorneys for the plaintiff in this case. I can't say definitely, whether I was present at the time they were handed to him, or whether they were handed to him or mailed to him. The facts with reference to furnishing a list of the property of the Washington Water Power Company in 1911 are these: Some time either the latter part of May or one of the very early days in June I met Mr. Wonnacott on the street, and he spoke to me about the assessment of the Washington Water Power Company for the year 1911; I can't fix the exact day; I have no memorandum by which I can do that. He stated to me that he desired to have a list of the property in Kootenai County. I told him that I would be glad to furnish it to him; and I also suggested that it might be well for Mr. Bleecker to come up. Mr. Bleecker is Vice-President of the company. And if there was anything he wanted to know he would ask him about it. I told Mr. Wonnacott that I would communicate with Mr. Bleecker and have him [297—13] come up. I find the only memorandum I am able to find in my files is a carbon copy of a letter dated June 9th in which I advised Mr. Bleecker that the assessments of the property of the Washington Water Power Company had not been yet made by the assessor, and that the assessor requested

(Testimony of John P. Gray.)

me to ask Mr. Bleecker to send a list of the property owned by the company, and suggested that I would like two copies of the list. That was pursuant to my conversation with Mr. Wonnacott, and as nearly as I can say, it must have been that day or the day before that I met Mr. Wonnacott on the street—June 9th. Pursuant to that, Mr. Bleecker came up either on the 10th—I think on the 10th. I know he communicated with me on the telephone and advised me that he was shortly going away on either the next day or within a day or two. I know that I have correspondence in my files which shows to me that Mr. Bleecker left on or about the 13th of June for a long vacation in California. It was between the date I wrote this letter and the 13th of June that Mr. Bleecker came to Coeur d'Alene, and I went with him to Mr. Wonnacott's office. I can't say whether Mr. Bleecker and I handed this list to Mr. Wonnacott at that time, or whether it had been presented to him by someone for us previously. At least at that time the list was there, and Mr. Wonnacott had it. This is the list I have in my hand, it consists of the property at Post Falls and certain pole lines, and a certain number of pieces of land, upon which the company has easements, or which they own in fee.

(Document here marked "Plaintiff's Exhibit No. 9.") [298—14]

WITNESS.—I introduced Mr. Bleecker to Mr. Wonnacott,—I think prior to that time they were not acquainted,—and I asked Mr. Wonnacott if that was

(Testimony of John P. Gray.)

the list of the company's property that he wished, and he said it was. I asked him if he desired us to put the valuations to the several items there, and he distinctly said that he did not, that he would assess that. I also asked him if he desired to have it sworn to as a correct list, and he said no, it wasn't necessary to have it sworn to as a correct list, that that was what he wanted, a complete list of the property, and as nearly as I knew it was a complete list of the property at that time. The question of the assessment of the Washington Water Power Company property in this county was then discussed between Mr. Wonnacott, Mr. Bleecker and myself. We felt that the year previously we had been unfairly treated in the assessment, and so stated to Mr. Wonnacott. At that time I said to Mr. Wonnacott that we would be glad if he would employ a competent accountant to go through our office and investigate the actual cost of the property at Post Falls for the county, and I said that we would even go so far as to pay for a certified competent public accountant whom he might select. He said that might be a very good thing, but he didn't have any authority to do anything of that kind. I also suggested that I would be glad to have some competent engineer appraise the property at Post Falls, and he said that might be a good thing, but it was for the Board of County Commissioners. He did say that he had been to Post Falls and looked over the property there, that he had been denied admission to the power-house, or one of the houses there. Mr. Bleecker explained to

(Testimony of John P. Gray.)

him, in my [299—15] presence, the reason, and that was that the employees at Post Falls, as well as all of the other power stations of the company, had been directed to refuse admission to anyone who applied for admission there without an order from the company, the reason being that it was dangerous to be in and about those—I don't know whether it is those high tension buildings or the power-houses there, but it is dangerous. I know Mr. Bleecker said he never went into them, but he said that if Mr. Wonnacott would fix any time he would go down or have someone go with him to Post Falls and take him through the plant, that he was perfectly willing for him to investigate the cost sheets of the company to ascertain what it cost. Mr. Wonnacott did not say at that time what he would do, and, after delivering that list to him, and he saying that it was all he wanted, Mr. Bleecker and I retired. The next step was at the time we filed the petition with the Board of Equalization of this county for a reduction of the assessment which Mr. Wonnacott placed upon that property. At the time I appeared before the Board of County Commissioners, sitting as a Board of Equalization, I had a stenographer present who took the proceedings, and I filed a verified petition for the company, and I am inclined to think it was attached to the complaint as an exhibit, and a date was fixed for a hearing by the Board of Equalization, and we appeared there at that time with witnesses, and there was a reporter present who transcribed the testimony, Mr. Lake, I believe. I had Mr. Lake, the re-

(Testimony of John P. Gray.)

porter, write off what took place at the meeting and furnished a copy to Mr. Wernette. [300—16]

The record of the proceedings taken before the Board of Equalization was then produced and it was agreed in open court that the reporter who took such testimony was a competent reporter and would testify that his transcript was true record of the proceedings had before the Board of Equalization. Thereupon such transcript was introduced and received in evidence. [301—17]

WITNESS (Continued).—There was just one step more concerning which I have personal knowledge and that was the tender to the assessor of the taxes which the Washington Water Power Company,—the sum which we conceded should be paid; on the 26th of December last I went with Mr. Steele and Mr. McCarthy, an attorney associated with me, to Mr. Wonnacott, and I then tendered to him, in gold coin and in silver coin the amount which we admitted we should pay. I have a memorandum here. I think everything is admitted really except the total sum upon which we made that tender. I believe it was in the neighborhood of \$854,300 and some odd dollars. The correct amount is set forth in the complaint. I stated to Mr. Wonnacott at that time that I did not ask a receipt in full. I proffered the money to him without conditions. We conceded that it should be paid, and simply asked for an acknowledgment that he had received that money, so that as to that no penalty would attach. He stated that he did not desire to take anything less than the

(Testimony of John P. Gray.)

full sum, and would not take any less than the full sum of the taxes as extended upon the assessment-rolls. I tendered it to him in two ways. It was difficult, if not impossible, from a real engineering or scientific standpoint to segregate the value of that property. It had been assessed by the assessor one time at one sum and one at another. At that time we had been unable ourselves to segregate those costs. I tendered him the money on a valuation of \$854,300, and let him distribute it as he pleased, or, if he desired that it be divided up, I told him it could be divided and applied in this manner, that we would tender on the four items of real estate which made up his real estate assessment, on the basis of \$109,-272.44, on the dams \$331,626; [302—18] on the buildings \$100,205; on the machinery \$313,236. The amount was \$13,800 in gold, and \$4.45 silver. In addition to that, upon what was assessed as the railway spur and bridge, I tendered him a sum in addition of \$73.88, which would be the assessment on it on a valuation of \$4,500. The assessor stated that he did not desire the plaintiff to fix in its return the values of its property.

Cross-examination.

(By Mr. ELDER.)

(Witness further continued:) Mr. Bleecker was with me at the time I visited Mr. Wonnacott in his office in June. In the first place I recall no visit to Mr. Wonnacott's office with Mr. Bleecker except on the one occasion I have mentioned, it was, as I have stated, in the month of June, and I would not say whether Mr. Bleecker had been in California prior

(Testimony of John P. Gray.)

to that time, he may have been. Mr. Wannacott did not say to me at that time that he had already assessed the property, he told me that he had been down and looked at that property. I am quite certain that I did not with Mr. Bleecker visit the office of Mr. Wannacott in regard to the taxes of 1911, between the first of July and July 10th, 1911. I said that a statement or list of the property of the company had been delivered prior to that time and contained a statement of power lines of some 24 miles in length in this county; that power line was being constructed at that time and in some way was overlooked in giving the property; it was, however, assessed and the assessment paid upon it; it is not involved in this litigation. The switch station at Cataldo was not included, that was also an [303—19] oversight; the fact is that we were not sure at that time that it was in this county, it was lying near the line; it was subsequently assessed, I understood, and the assessment paid for that year; in that connection I would say that the Washington Water Power owns a great amount of property. It is listed by subdivisions, and covers many pages, and these two items, it is true, were not incorporated. The assessment, however, was paid, taxes were paid upon it. I couldn't say that the tax was paid upon that property; it was not intended to leave out any property of the company. We were dealing then as we always have attempted to deal with the officers of this county, fairly. I cannot tell the value of the power line, I don't pretend to be an expert on values;

(Testimony of John P. Gray.)

I know it was left out inadvertently; I know it was my desire to have all the property included there and assessed; we have never tried to escape taxation; I tendered the money on the real estate, which is one piece of land there, because I didn't know of any method—and I don't think anybody else knows of any—by which you could segregate it. I tendered it and let him apply it just as he wanted to. I didn't care. I was willing to give the county just that much money. On the dams, it is true, I didn't attempt to divide between one dam and another. I didn't know how to do that, and the company never carried those separately. But he was perfectly at liberty to credit them just as he wanted to.

In "Plaintiff's Exhibit No. 9" the first four items are separate descriptions of real estate; they are described practically, for instance, on page 11, book 1 of deeds, situated in Sections 3 and 4—if you will turn to Exhibit No. 1 it will show that the outlines of the property of the company [304—20] at Post Falls are very irregular, and to give it by metes and bounds, each one of those descriptions would be quite lengthy, and the assessor of this county had theretofore adopted that method of describing the property, and I simply took, for convenience, his own method. That will show the book and page of the record of this county where this description is contained. This map seems to show that islands No. 2 and 3 are not contiguous; they are contiguous in the sense that they are separated only by one of the channels of the river, and that land coming from one

(Testimony of John P. Gray.)

of our original grantors was patented under a special act of Congress to Frederick Post, as one tract of land, before the legal surveys were extended.

I did not tender to the assessor of Kootenai County any sum of money on the property described on page 11, book 1, of deeds, situated in Sections 3 and 4. I did not know how I could divide that up; I was willing he should divide it any way he wanted to. I wanted to pay him the money and get a receipt. I didn't separately tender to the Assessor any sum of money as taxes on Island No. 2; I didn't think he had any such thing assessed in that way; I didn't know there was an island called No. 2 when I made that tender; I didn't know of any such island as Island No. 1; I tendered the taxes we conceded were due. I didn't ask him for any receipt or receipt in full. I asked him to take the money. I said it should be received on account of taxes; I didn't state to him, if he received this he received it as taxes on this property. I tried to explain to him that the county ought to be glad to take that much money. [305—21]

Beginning at line six and continuing to the last of the description of the property on page 8 of the bill of complaint to which you refer, is the property which the assessor pretended to assess against the company for that year. I asked Mr. Wonnacott to count the money and he said he didn't care to count it; he said he would make no question about that. Mr. Dollar, President of the Exchange National Bank, counted it, and said it was all right; there was no question about that.

[Testimony of A. J. Wiley, for Plaintiff
(Recalled).]

A. J. WILEY was recalled to the stand, and testified as follows, on

Cross-examination.

(By Mr. ELDER.)

I am not employed in any manner by the General Electric Company, nor by any of its stockholders. I visited the property of the plaintiff for the purpose of appraising it on July 1st. I spent on the property three or four hours, perhaps longer. I used the plans in getting the size of the dam; the total length is 120 feet, the extreme height 36 feet 6 inches; the top width is 11 feet over all, the bottom width is 28 feet over all. Upstream face vertical, downstream slope for the first $13\frac{1}{2}$ feet is batter decimal .223 in 1. That is 2 tenths of a foot about to the foot. And for the remainder of the dam the batter is .609 in 1. Batter is the slope. There are 2128.1 cubic yards contained in the dam; there is a total excavation of 4645.7 cubic yards. I figured that out myself; I arrived at the amount of excavation by taking the original profiles of the company and using those [306—22] estimating the yardage from that; I actually estimated the yardage myself, assuming only that the original profiles were correct. I figured there were only 200 yards of earth in the excavation, I got that from the notices of the engineer in charge. As I remember, that was on the profiles, 200 yards of earth, and 500 yards of loose rock. All the remainder was solid rock. I

(Testimony of A. J. Wiley.)

figured the earth at 35¢ a yard; the loose rock at 50¢ a yard, and the solid rock at \$1.25 a yard; these costs are simply the original costs. To all of these costs I added, first, 5% for engineering and 10% for supervision and contingencies, making a total of the 15 per cent added to these costs. I disregarded, in estimating this cost, what the company paid for it. From my previous experiences on cost of excavation and cost of concrete I arrived at the amount; this is massive concrete, and I estimated in the different work the concrete all the way from \$7.00 per yard to \$12.00 per yard, depending upon the character of the concrete, but this was the cheapest class of concrete, massive, very little form; I figured a coffer dam at \$488, that was taken from the costs of the company; there is no way of estimating what a coffer dam would cost unless you have been there to see it. I think no pump would be required there—putting a temporary coffer dam above the site the water would be drained off. I figured 2 per cent depreciation per annum for these dams.

The north channel dam is divided into two parts, consisting of the bear-trap section and the tainter gate section. The bear-trap section has a top width of 25 feet, a bottom width of 48 feet, and has a total length of 148 feet [307—23] even. The tainter gate section has a total length of 283 feet, and it is extremely hard to give the dimensions of that because it consists simply of a succession of piers separated by large swinging gates. It hasn't any dimensions except the piers themselves. I can give

(Testimony of A. J. Wiley.)

you the size of the piers and the dimensions between them. Those piers are located on the bedrock. I figured each pier individually and then the connecting part underneath; I did not take the figures as given me by the company, I had the original contour profile. The piers have a top width of 12 feet, an extreme bottom width of 25 feet, and a height of 16 feet, and out of that there is a well 4 feet in diameter and 15 feet deep, also a recess 4 feet wide, to be taken out of the downstream portion of the dam, to a height of 8 feet above the bottom, extending back to a point 9 feet from the upstream face, in other words, to the well of the dam. The portion connecting the piers is 6 feet wide on top, with a slope of 3 to 1 on each side. The cubic contents of each pier is 113 cubic yards. The cubic contents of the whole dam is 4878.5 cubic yards; that includes the entire dam; the cost per cubic yard I estimated at two prices, the massive part, that is the part under the bear-trap dam, I estimated at \$7.00 per yard. The piers have a great deal of form work and I estimated them at \$8.00 per yard, the other is comparatively plain massive work.

I can give you the excavation made at this dam more easily if I give it in subdivisions; the total was 12,004 cubic yards; I estimated 5605 yards of earth at 25¢ a yard; 800 yards of loose rock at 50¢ and 5599 yards of solid rock [308—24] at \$1.25; there was a coffer dam built there estimated at \$1,865. I allowed 2 per cent for depreciation on that; it is popularly supposed to be the fact that the

(Testimony of A. J. Wiley.)

longer this concrete stands the better it gets, it is not always a fact, there is a certain risk about concrete, a great deal of concrete has gone to pieces, but in this case there are other elements in connection with these dams that deteriorate. There is a large amount of wood and iron, all of which deteriorates very rapidly. There is also an element of risk. A dam sometimes fails entirely from flood, and all of that has to be taken into consideration; the items of depreciation would be the gradual deterioration of the work from any cause, and especially the deterioration of the wood and iron work, not the deterioration of the cement work, that is not really considered very seriously, although that is an element which enters into it.

There are about 21,000 footboard measure of woodwork connected with the south channel. A large per cent of these dams is concrete work; I would say that concrete work does not generally depreciate. The depreciation was figured on the iron and woodwork, and a certain part of it to the concrete work. I do not think any structure of cement or masonry will last forever; it has a life of 50 years; it is not a fact that these depreciations are taken care of out of the maintenance fund; the maintenance fund does not apply to the gradual deterioration. You can patch up a thing year after year and keep it in shape but finally that thing will wear out and you finally have to throw it away and buy a new one. I wouldn't admit that with a great deal of machinery they take piece by piece and repair it

(Testimony of A. J. Wiley.)

and [309—25] that it is always a good machine; there will be a time when you have to build a new one.

The middle channel dam is 175 feet in length, its top width is 14 feet and 9 inches; its bottom width is 46 feet; its extreme height is 64 feet. The upstream face is vertical and the downstream face is batter from 14 feet and 9 inches on top to 46 feet on the bottom. The cubical contents of the middle channel dam is 8043.1 of concrete. I figured that at \$7.50 per cubic yard; that is a massive dam but at the same time it has several openings. There was a coffer dam built which I allowed \$1631 for coffer dam. That was an arbitrary amount and was taken from the records of the company; the records showed that amount and is contained in work orders; in many cases I traced right back to the work orders. I was there, as I remember, ten days. I spent the first day on the dam and all the rest of the time I was in the office of the company; a young man named Mather, in the employ of the company, assisted me there; the same depreciation, 2 per cent, was allowed for this dam. The excavation was 51073.9 cubic yards; 200 yards of that was estimated as loose rock; 5873.9 was estimated as solid rock at \$1.25, plus the engineering and supervision costs 15 per cent; the total cost is \$184,906.07; as described to me, when the company bought this property there were already old dams in use there that they took care of the water by simply raising those dams a small amount.

There are 5 general electric generators with a ca-

(Testimony of A. J. Wiley.)

capacity of 2250 kilos each. They are 3 phase, 4 exciters; those generators are worth \$19,600 each at the factory, the freight [310—26] was \$3,141 each. I estimated the cost to put them in place \$1.50 per K. W. hours, or \$16,875 for the five; I did not take that from the books of the company, that is my own estimate. I called the cost of the railroad that is built to get those transformers over there the hauling, in all plants there is usually a freight haul from the railroad depot to the plants, and in this case instead of figuring so much for hauling I allowed half the cost to the railroad spur, charged $\frac{1}{2}$ the cost to the generator and $\frac{1}{2}$ to the turbine; divided it between the two items, that is a separate item. I since compared those items with the figures of the Washington Water Power Company; they compared very closely. I took the cost of all the machinery from their original bills, I have forgotten the number of panels of the switchboard. I would say it was about a ten panel switchboard. There is a generator panel for each machine; there is also an exciter panel for the exciters, and there are the feeder panels also, a fully equipped switchboard in every respect, bench-board, type switchboard. I would say it was a modern, up to date plant. There is all equipment and arrangements made for six units, except the generator itself and the turbines. The factory cost of those turbines was \$19,500, each, complete, feeder-pipe and draft tubes. The cost of the freight was \$2,926 each; the cost of hauling, in other words, its share of the railroad spur was \$1,930.20 each. The

(Testimony of A. J. Wiley.)

cost of installation was \$4,613 each, that was the total cost of each of them; the total cost in place of each of them is \$30,619. I would like to add to that, to these figures as to the others, 6 per cent has been added to all machinery cost, 2 per cent for engineering and 4 per cent for [311—27] supervision and contingencies, to all machinery costs. This \$30,619 plus 6% for engineering is the sum I figured each of these turbines cost. I arrived at the sum of \$19,030 as the portion of the transportation charge by taking the cost of the railroad spur, estimating the total cost at \$19,424.97 and dividing that evenly between the hydraulic and electrical machinery, and then I divided that by 5 to get the cost of hauling of one turbine. The freight cost was \$14,630 on the 5 turbines; they have six, three phase transformers, the value of each in place is \$7,853.00, I estimated six main transformers; in the main generator station there are other transformers, secondary transformers, I have put that in a lump sum, along with the electric conduit wiring, switchboard, etc. The total amount is \$36,072.33. I find those transformers are not listed, and in my list here I don't think they belonged to the company, but my understanding was that those other transformers are not the property of the company; at least they are not listed in my list. They are in the building, but I think they don't belong to the company. I didn't figure them; they are not included in that \$36,00. The low tension bus-bars is included in this list of \$36,072.33. A large amount of the miscellaneous material is storage

(Testimony of A. J. Wiley.)

batteries, heating plant and cooling system and frequency indicators, extra storage batteries, all aggregating \$36,072.33. That is not an estimate *is* was taken from the actual records of the company. It is very difficult to estimate correctly all minutiae; in fact, that is why estimates on power plants are frequently underestimated, because so much is left out on account of the difficulty. This was taken from the [312—28] records of the company, and includes everything; I looked it up, saw it and verified it. After I saw and secured the records of the company in regard to what they had in this plant and the valuation, I did not verify it by making a physical examination of the plant with respect to a few items such as this one I have just given you, \$36,000.00. I did on everything else practically; all the larger items I verified myself; that \$36,000 does not include the high tension equipment, that comes under another head; it does not include the exciters; they were included with the generators in my estimate, a separate item in the estimate. There were 4 exciters at \$1400.00, \$5600.00. In estimating the cost or the value of this property I didn't consider it in connection with the property and with the company's property as a going concern. I simply estimated what it could be produced for. The high tension switches and lightning arresters were not included in that \$36,000; the low tension switches were included; the amount of the high tension equipment is \$29,130.08 plus the 6 per cent; that is all the high tension equipment I have estimated, exclusive of the

(Testimony of A. J. Wiley.)

transformers. I considered that a part of the low tension equipment; I didn't include any transmission lines or anything of this kind in my estimate. There are two cranes, one 30 ton electric crane, and one 10 ton hand crane not included in that \$36,000. The 30 ton crane cost in place \$4,757.74 and the 10 ton crane \$1,475; I took that from the original cost from the records of the company, and estimated the cost of erecting them. I did not then allow 2 per cent depreciation, that is the original cost. I added to that 2 per cent [313—29] and 4 per cent for engineering and supervision. In arriving at the cost of the plant I did not allow 2 per cent for depreciation.

The length of the power-house is 173 feet and 2 inches. The width is 82 feet and 9 inches. There is another L to the power-house, whose length is 76 feet 5 inches, width 32 feet 4 inches, and 65 feet in height over all at the downstream face. I cannot give the cubical contents. I didn't estimate it in that way. The total cost of construction is \$134,556.28, that is, of the power-house I have described, all exclusive of the high tension buildings. That includes the piers under the house; it does not include the excavation, cost of the middle channel dam included the excavation for the power-house. It is not reinforced concrete under this building. It is practically all plain concrete; the cost of the high tension building I cannot give exactly. I have the cost of the high tension building alone at \$21,309.11, but that does not include any engineering or supervision. I estimated the high tension building and equipment together and

(Testimony of A. J. Wiley.)

added the percentage after the two were put together. I inquired of the employee of the company who had particular charge of the cost of the plant, in regard to the cost of labor and material around Post Falls; in other words, I took practically the records of the company on that. I have not included in considering the costs of the plant, any legal expenses nor any insurances. I took into consideration interest on the construction cost for one-half the time during which the plant had been constructed. I took it on each one separately, I can give it to you on each one separately. I figured 8 per cent for 6 months, I estimated [314—30] that the plant would reasonably take one year to construct, and I allowed 8 per cent on one-half on the entire construction of each item.

Redirect Examination.

(By Mr. GRAY.)

(Witness further testified:) The profiles and plats which I have referred to were the original records of the company. I would define obsolescence as being an allowance made for the inadequacy of the plant, for the fact that since the plant had been constructed it had advanced to such a state that the equipment was no longer up to modern times, and could not compete with more modern machinery, and would have to be replaced in order to give satisfactory service. That is included under part of depreciation.

[**Testimony of C. F. Uhden, for Plaintiff
(Recalled).**]

C. F. UHDEN was recalled and testified upon

Direct Examination.

(By Mr. GRAY.)

At the time the company purchased the property at each channel there was a timber dam built, and on top of these timber dams we erected cribs; these cribs were about 10 feet high and we used them for our coffer dams. The profiles, plans and maps that Mr. Wiley has used and referred to were the original plans and profiles of that work and improvement, and were turned over to him for his inspection; they are under my supervision and control. The work order which I referred to this morning and which I traced into the general ledger was representative of the system which was employed there in that construction; there were approximately [315—31] 130 such orders. I have some of the work orders, not all of them. The other orders will be here; I do not believe Mr. Wiley had the original way bills; he had the carbon copies, which have been kept in my office since the construction of the plant.

Cross-examination.

(By Mr. ELDER.)

(Witness proceeded:) I was in charge of the construction work. I had direct charge of this work at Post Falls. I was under Mr. McCalla; he had something to say about that work; he was my superior. Mr. McCalla had supervision and control of all the

(Testimony of C. F. Uhden.)

work. Mr. Huntington is over Mr. McCalla, and the Board of Directors over Mr. Huntington. A contract was let for the work to start with to Bennett & Beeler. I cannot tell in dollars and cents how much work they did there. I was not working for them; their work is included in my estimate of the cost of that plant from my work orders which cover their work; as to whether a man had a contract or not would make no difference as to the number of work orders we would open up; for instance, take the south channel dam; I would open up a work order for excavation on the south channel dam; I would open up another for concrete in the south channel dam, and another for installing gates, etc.; the engineer in charge of the work makes his estimates and turns those estimates into the office and they are placed in the books and charged to the proper work order. Bennett & Beeler did a certain portion of the work, the company issued work orders, and as certain work was done, either concrete or excavation, it was charged to the work order for the particular dam. I have not that contract here. That contract [316—32] covered the whole plant so far as the concrete and excavation was concerned. I do not remember the amount of the contract; it was quite a lengthy contract; it didn't specify the actual number of yards, just gave an estimate of the number of yards of rock or earth to be excavated, and the approximate number of yards of concrete, and they made a bid or certain price for rock excavated, dry or wet, and a certain price for concrete laid dry or wet, making a

(Testimony of C. F. Uhden.)

certain price for the different points at which it might be placed. I cannot give those prices to you. I could by sending to Spokane and getting the contract.

I will explain why the company issued work orders under the contract of Bennett & Beeler in this way: Supposing you were going to dig a well, I will give you a contract for \$100 to dig that well; I want to keep track of how much dirt you take out of there, and I want to keep track of the curbing you put in there. I will issue two work orders, one for excavation and one for curbing. During one month you take out a certain amount of earth, and I make my estimate and put that in the work order for the excavation of the well. If you put any curbing in that well during that month I make an estimate of that and charge that to that particular order, and so on down till you get to the bottom of that well. When you get through I have got that segregated into two work orders, and I pay you so much per foot for sinking that well. The work orders were simply estimates the same as under any contract, and at the end of each month an estimate is made and the contract is given a certain percentage of the work done; it made no difference [317—33] to our company what the cost to Bennett & Beeler was. In a work order for Bennett & Beeler what I did would be to estimate the amount of yards of work done on a certain dam, and they would be paid for that amount of excavation that month, and on another work order the number of yards of concrete laid and that would

(Testimony of C. F. Uhden.)

be paid for that month; that is all the work order would show. It wouldn't show the labor.

It is not a fact that Bennett & Beeler took a contract which provided that they should do this work for a reasonable sum, the amount of yardage was not figured in the contract. The yardage was estimated, it may run over or it may run under the estimate, and we paid so much a yard for all the work they did, I couldn't tell how much off-hand, for the reason that the excavation wet and the excavation dry are different prices at different places, and in order to give you that I would have to have the contract; the work orders would not show but would show the number of yards that were put in, and give the lump sum. I find I was mistaken in stating that the work order didn't give a price per yard, I find it does give the final estimate here. We paid for solid rock, 89¢ a yard; for loose rock, 53¢; for concrete placed in the dam, \$5.65 a yard; for the concrete placed in the piers which form a part of the power-house foundation, \$6.60 a yard. Bennett & Beeler did not complete their contract. The work was not being done to the satisfaction of the company, the company took over the work. The company did not pay Bennett & Beeler any additional sum other than the contract price for the work they completed, so far as I know. They were not paid several thousand dollars to give up the contract. I could not say whether they were [318—34] going behind or not; it was the opinion of the company that the work was not progressing

(Testimony of C. F. Uhden.)

as fast as it should. In arriving at the cost to the company, I determined the amount of solid rock which was excavated, I can give you the average cost of solid rock, loose rock, and earth on the south channel dam; it was 84¢; the total amount of excavation there was 4,646 yards; about 87 per cent solid rock, 10 per cent loose rock and 3 per cent earth. Bennett & Beeler did all the excavation of that work. The total amount of excavation on the north channel was 10,259 yards. of which 50,959 yards were solid rock, which cost on an average of \$1.31 per yard; 800 yards of loose rock, 50 cents per yard; 3,500 yards of earth at 22 cents per yard. On the middle channel dam the total amount of excavation was 51,681 yards, with an average price of just a fraction less than 89 cents; that work was done mostly by Bennett & Beeler; there were 50,117 yards of rock in that which shows that practically all of it was solid rock; their contract was 89¢ for solid rock; the reason the price was less there were 200 yards of loose rock in it. There was an amount charged against the construction of this dam for the services of Mr. MacCalla, as general manager of the company. I couldn't tell you how much for I haven't the payroll with me. My work order for engineering, superintendence and drafting will give you the total amount, the charge of all the men that worked on it. For instance, I have in the drafting room 32 men. They work on different work, and a great many of them were working on the Post Falls job. At that time,

(Testimony of C. F. Uhden.)

of course, we didn't have as many as we have now. Part of my time is charged to it, [319—35] part of Mr. MacCalla's and part of the other officers, but I cannot give you the amount. The salary of Mr. Huntington, as president of the company was charged proportionately to the construction of the Post Falls dams. The salaries of every officer of the company is proportioned at the end of the month through the different work orders which we have opened up, and also for office expenses. I couldn't tell you how much of Mr. Huntington's salary was charged; the carbons simply charged to me so much labor; that labor of the men includes labor of the office force. I couldn't tell exactly how it is divided up. I presume the auditor of the company could tell. I couldn't tell you whether in determining this cost legal expenses are included; I do not know. I know the amounts which are chargeable against the Post Falls dam in so far as the work orders show; they show simply a lump sum for labor; they itemize the materials; the labor is itemized in the payroll. I figured interest as one of the items this morning; the auditor gave me that, the amount of interest charged against the plant during construction. In my figures I used the carbon copies which were sent to me at the time of the work orders, and information that the auditor gave me. I have the total that went to administration and superintendence and engineering in the course of that construction, from all of the pay-rolls and work orders. This was to be given

(Testimony of C. F. Uhden.)

up to January 1st, 1911. This sheet I have here brings it up to June 1st, 1912, making a total amount of engineering \$35,600; administration and management would come under that. This auditor's memorandum shows the original entry of interest on [320—36] construction, shown on our ledger. The book which I testified from is simply a loose-leaf memorandum-book of figures which I compiled myself. That \$35,000 item covered from the time of the starting of the construction of the plant up to June 1st of this year. Also the preliminary work in the way of engineering work done prior to the time the construction was started; the first contour map that was made was charged to that; the engineering since the construction has been very small. The administration, superintendence and engineering charges are included in the item of labor. I know simply from the rules of the company; my salary and the salaries of other engineers and the superintendent would not appear upon one particular structure, because that structure is part of the entire plant; at the end of each month the salaries of all of the officials of the company are divided and charged into a work order similar to that, which I have opened up for engineering, superintendence and drafting. The only thing I can show on this one is the proportionate amount of the engineer who was in charge on the job, his proportion that was charged to this particular work order. I can't produce one here that will show you, for instance, the percentage of Mr.

(Testimony of C. F. Uhden.)

MacCalla's salary, who was general manager of the company, that is charged to the job, because that comes in on the regular payroll each month, and is turned in to the engineering work order which I have opened. It is entered from the payroll into the work order sheet.

I have no work order sheet except the one referring to this particular order here, which shows here, outside of the men who were working on the job, a charge of \$12.50 for [321—37] the salary of W. C. Weeks, who was in charge of the works at that time. His salary is distributed at the rate of \$12.50 on this. My salary is charged into the engineering order. When I close all the work orders for the job, I take a certain per cent of my salary and put it into dams, a certain per cent into powerhouse, and a certain per cent into machinery. I use my own judgment and make calculations accordingly.

I have here work order 1061, which is one of the work orders of engineering expense. The total amount of labor is \$310.18. Now, as to how much of any one person's salary is charged in that I couldn't tell without the payroll, but that does include some of the official expenses.

[Testimony of George B. Colpas, for Plaintiff.]

GEO. B. COLPAS was called as a witness for plaintiff, after being sworn, testified upon

Direct Examination.

(By Mr. GRAY.)

I reside at Spokane. I have our books showing

(Testimony of George B. Colpas.)

the entries of interest on construction. I am auditor of the Washington Water Power Company, and I have held that position since July 1st, 1907. My duties are keeping the books of the company. I have an account for the construction of the Post Falls plant. In that account I computed and made a charge for the interest during construction for the year 1906; for 1905 the treasurer made the entry; I do not know who computed it; that entry was made in the main ledger of the company. The total of the interest that we paid on loans for construction purposes for the year 1905 was \$25,859.19; that was not all charged to the Post Falls plant; [322—38] in 1905 the \$25,859.19 was divided up and \$13,610.10 charged to the Post Falls property; for 1906 the total interest paid was divided up to the construction accounts, the Post Falls plant taking \$20,960.-69; those were the interest charges charged to the Post Falls plant; those figures are from the regular records of the company, which I had in my possession.

Cross-examination.

(By Mr. ELDER.)

(Witness proceeded:) The division in 1905 was divided on the basis of what money had been expended on the Post Falls plant and on the building of our new interurban line, each part taking its share of the interest. Up to the end of 1905 there was \$113,426.84 expended on the power plant, and, in addition, we had expended \$69,219.30 on the water rights. That is, the land for the Post Falls

(Testimony of George B. Colpas.)

development, all of the land around Post Falls for the development of the property was included in this charge of \$69,219.30; that was the total sum paid for the land around Post Falls; up to that time the rate of interest varied, which the company had to pay; our bonds are 5 per cent; they were then and are now. We sold temporary notes, on which we paid five per cent. The various rates paid by the company as interest charges on the Post Falls in 1905 was five per cent. Not all of the money which was used in the construction work for 1905 was at five per cent. I can't say what the maximum rate would be, but the five per cent covered a large part of the loans. Anything in excess of five per cent would be on possibly only small loans that wouldn't cut much figure. The fact is that practically all of the money was secured at the same rate [323—39] of interest, and the same rate of interest was used in 1906 and practically all interest that year was secured at the rate of five per cent. At the end of 1906 the Post Falls plant stood on our books at \$795,107.06; \$69,272.44 of that was expended for lands; the figures that I am giving you there were not all expended that year; that is what was expended for all the time up to the end of that year. From the commencement of the plant I cannot give you how much was expended on preliminary surveys. I can't give the amount that was expended for labor without going into the details of the work. The cost of preliminary surveys is included in that figure as also the labor and all

(Testimony of George B. Colpas.)

salaries. I can't segregate them, but I say it will take a pile of papers five feet high; the papers are all here. The information that I can give you in regard to this \$795,107.06 is that it is the cost as footed on your books of the construction of the plant. I believe the plant was completed in 1906. I cannot speak for sure whether it was completed so as to be put into operation; there were two accounts kept, one for the development of the building and the dam, one for the property; this ledger shows the property account; it was started in January, 1902, the \$52,000 item was closed into our general property account in 1902; then this account was opened up and we paid \$17,206.17 additional to that making \$69,000; there are probably twenty-five different jobs on the Post Falls development, and these amounts represent the total amount of each of those jobs each month. That includes the preliminary expense, the hydraulic machinery, the dams, and the cement, [324—40] and the buildings. Each month the cost of the entire building of the plant is posted in here, and that consisted of twenty or twenty-five different work orders. That is the end of it there (indicating on ledger to the court), \$749,000. After that period, or commencing in 1907, the classification for distributing electrical machinery was decided on, and that is kept in another account. I have the records of that, Station buildings, commencing in 1908 there was \$749.33 chargeable to the Post Falls plant; in 1909 there was \$25,600.30; in 1910 there was \$26,000; in 1911

(Testimony of George B. Colpas.)

there was \$6,000. There has been \$58,000 additional charged to the Post Falls buildings since the close of this account, that was for the station buildings. Then we have the station apparatus. To January 1st, 1911, the total cost charged to that plant was \$1,068,844.90; the amount to January 1st, 1912, was \$1,088,604.01. I won't be sure that I can give you the exact figures of the expenses in making the preliminary surveys. The item of \$1,068,844.90 includes the real estate; it includes all the cost of the plant at Post Falls up to that time. I do not know that in the purchase of the water rights and land the company granted or contracted to deliver to Mr. Strathern so many horse power of electricity. I do not think my books show anything of that kind in the ledger. I do not know that the company granted to Mr. Martin an amount of power.

Mr. GRAY.—We admit that, and we presume you also admit that you have taxed Mr. Strathern and Mr. Martin for it.

Mr. ELDER.—I don't admit any such thing; it don't make any [325—41] difference; it has nothing to do with the value of this.

Mr. POST.—We will furnish the evidence.

WITNESS.—I do not know if any power is being delivered without consideration to Mr. Martin and Mr. Strathern as part of the purchase price of their land and water rights at Post Falls. The first charge was made in August, 1904, the first work order may have been issued a month or so before

(Testimony of George B. Colpas.)

that, or a year before that; the only expense was for the purchase of the land prior to that time; there was no expense prior to that time covering engineer's engineering expenses. There is nothing, not any charge in that amount as given for the total cost of this plant the first of January, 1911, which includes the purchase of water rights around the Lake. I do not know that we have charged any sum for the purchase of reservoir rights to this Post Falls plant. I do not know that any legal expenses in condemnation of lands for a reservoir site is included in that amount. I do not say that there is a charge there for that. I may locate one; the general ledger only shows the total cost of the plant.

Redirect Examination.

(By Mr. GRAY.)

(Witness continued:) In answer to a question by the Court I said that in the Post Falls property account we had a total of \$69,000 and some dollars; that was up to January 1st, 1907; of the total of \$1,068,000, \$109,272.44 was for real estate; the difference of \$40,000 is represented by additional land which was purchased there subsequent to the 1st of January, 1907, purchased in 1909. [326—42]

[**Testimony of C. F. Uhden, for Plaintiff (Recalled
—Cross-examination).]**

C. F. UH DEN was recalled and testified as follows, on

Cross-examination.

(By Mr. ELDER.)

I stated yesterday that the total cost of engineering charged to the Post Falls plant was \$35,600. I cannot give you each separate item included in that item, but just generally what is included; in that item would be included a portion of the supply department expenses at Spokane and the engineer in charge of the Post Falls work, and assistants under him, and drafting-room expenses, and yesterday I stated that also some of the general officials of the company who were above me, and in looking up the records of the company who were above me, and in looking up the records last night I find that I am mistaken in that matter; their salary is charged on to some other order of the company and divided in among the other—at that time, among other accounts. I can't enumerate all the other accounts to you; it was simply an arbitrary division; no part of their salary was charged to the Post Falls work; none of the general manager's salary was charged; none of mine was either and I had charge of that work. I spent the greater part of my time at Spokane, visiting the plant from three to four times a week. I cannot tell you how much of my time was spent on that work during the construction of that plant at Post Falls nor approximately.

(Testimony of C. F. Uhden.)

We had Mr. Hershell of New York here, a consulting engineer, who looked over the proposition. I cannot tell you offhand the charges he made against the company, which were charged to this work. Captain Powell drew the plans for the North Channel dam; my recollection is that his services were charged in the sum of \$500.00. I think he was there about two or three days; [327—43] he was the only other consulting engineer I remember of; the bear-trap dam is on the north channel; the dam consists of 10 gates. Some of these gates are ten feet high, and the base under them is about two feet of concrete, so that would make the piers on the side of which Mr. Wylie gave you the dimensions yesterday, gives you the depth at that particular point. The bear-trap dam is the dam that collapses; it is raised and lowered by water pressure, and consists of three leaves. The water is turned in through one of the valves underneath these three leaves, and they rise, and a downstream valve is opened, and the upstream valve is closed, allowing the water underneath to escape, and the leaves collapse and the dam opens. The crest of the dam above sea level is 2116 and a fraction feet; that is the top of the concrete work beneath the bear trap. I do not know the per cent customary in the putting in of the hydro-electrical plant similar to this at Post Falls figured for engineering expenses.

Redirect Examination.

(By Mr. GRAY.)

My recollection is that my salary varied during

(Testimony of C. F. Uhden.)

the period of construction from \$65 to \$150 per month.

Cross-examination.

(By Mr. ELDER.)

I could not tell you offhand how many men we had in the field during the construction of this dam, for the simple reason that we took some men out of the drafting-room at Spokane at different times, and sent them up there to get such information as we wanted; my recollection is that that was charged against the Post Falls plant; they were there just a few days; it would take only a few days to get all the data which we would require to install the plant, to make the [328—44] preliminary drawings. We had access to a previous survey that had been made by other engineers, which expense we were not put to, which we ordinarily would have been. My recollection is that the plans were drawn by a man by the name of Riblett; those plans were turned over to us at the time we made the purchase.

**[Testimony of A. J. Wiley, for Plaintiff
(Recalled).]**

A. J. WILEY was recalled and testified upon

Direct Examination.

(By Mr. GRAY.)

I was asked on cross-examination whether I had made any allowance for legal expenses or for insurance during construction. I stated that I had not. I meant there was no special, extra account for that, no special item, but that I had included it in my

(Testimony of A. J. Wiley.)

item of ten per cent and four per cent for supervision and contingencies. I never, in estimating, carry insurance or legal expense, but carry them in overhead charges. I allowed ten per cent for the construction work and four per cent for the machinery; that is a common engineering practice; that is in addition to the engineering itself, and based upon my experience that is a proper sum to allow for an item such as that. I always use five per cent for construction work, and about two per cent for machinery, and in which the engineering expenses are largely included, my estimates would include that.

Cross-examination.

(By Mr. ELDER.)

By the word "plant," I would include everything in connection with the development, including dams, power-houses, buildings, machinery, every item necessary to the operation [329—45] of the plant, but not transmission lines; very many plants are operated entirely without reservoirs, from the normal flow of the stream, and many plants have no transmission lines, because all the output is used nearly at the plant, and, in general, it is conceded that the plant itself does not include transmission lines or any outside auxiliaries.

**[Testimony of John B. Fisken, for Plaintiff
(Recalled—Cross-examination).]**

JOHN B. FISKEN was recalled and on

Cross-examination.

(By Mr. WERNETTE.)

(Testified:) I graduated at Glasgow, a branch of the London institution. I was assisting in the operation of the Seattle Gas Company's electric plant while at Aberdeen; from there I went to Tacoma for a couple of weeks; I was installing a couple of buildings there; I was at Victoria for the first six months of 1887, in charge of a plant there; I was in Vancouver for one month in charge of the installation of the C. P. R. Hotel. I came to Spokane the 1st of August, 1887. I came there before the Washington Water Power Company was formed. I started to work for the company the day it was formed, and have been working for them ever since with the exception of about one year; I have acted as manager, lineman, collector, bookkeeper, superintendent; that was in the early days when two of us ran the plant. I have done some engineering work for them in the construction of the railroads. I have done considerable engineering work around the development of the power in Spokane. I have had charge of the construction of about four stations in Spokane, and I had entire charge of the electrical construction of the present Spokane plant. I [330—46] didn't have anything to do with the hydraulic work there, in the construction of that plant.

(Testimony of John B. Fisk.)

I am now superintendent of light and power, and have been engaged in that capacity for about two years. I have three assistants, each one in charge of a particular part of the work, each assistant has a staff of assistant engineers and clerks under him. I have a general office, with a head clerk and four or five men under him, varying according to the amount of work we are doing. My assistants do not incur any expenses exceeding a small amount, about \$10 for any job, without consulting me, and they report to me after the job is done what it has cost. I do not check over each bill that is incurred by my assistants in that way; the larger bills I pass on myself. I would consider a large bill anything over \$10; I do not personally check up the amount of electricity that is furnished by the Post Falls plant to the various companies and corporations which purchase the power. I couldn't give you the names of the persons who do that; there are about 15 or 16 men, I should say, engaged in that. I can get the names. I obtained the information about which I testified as to the total output of the company at Post Falls from the records of the company; those records were made up by someone under me; it may have been one of my assistants; some of them may have been made by their clerks, and some by the foremen in the plants. I do not know personally whether or not those records are correct; it would be absolutely impossible for me to know that; the loss in the amount of power that is sent to Shoshone County is ten per cent. I mean by that ten per cent of the

(Testimony of John B. Fiske.)

power that is generated is lost in the lines and in the step-up transformers and the [331—47] step-down transformers, that is a low estimate; it wouldn't be less; I know that from the figures that have been made on the line. We take charge of the loss to our customers' meters and pay for it; that is not true in all instances of the power that is furnished from Post Falls; we supply power to the Inland Empire Railway System at the switchboard; we supply power to Mr. Martin at the switchboard, to Mr. Strathern and the Kootenai Power Company; the loss in sending the power to Spokane is about ten per cent; there is a 25 per cent loss in conversion; we have to convert the alternating current power into direct current power for use in Spokane; as the power is converted it is put on the bus-bars in Spokane along with the current generated in Spokane, and is then sent out to the customers through their distribution system, and before that electric current can be consumed there would be another loss. I should say that the loss there would be probably an average of about 15 per cent; some of it would be less and some more. There would be but a small loss where the current or power is delivered at the switchboard, as in the case of the power furnished to Mr. Martin, Mr. Strathern and the Kootenai Power Company, there would be practically no loss. There is a difference as to the amount of loss, depending on the length of the power line over which the power is sent; the power line from the Post Falls plant to the mining district up in Shoshone County is about

(Testimony of John B. Fisk.)

65 miles from the Post Falls plant; to Spokane about 26 miles, approximately. I think the loss is greater from Post Falls to Spokane than from Post Falls to the mining district; the wire is smaller and the amount of current over it is greater in proportion to the size of the wire; the wire from the plant up to Shoshone County is [332—48] smaller; the wire is twice the size from the plant to Spokane. All our transmission lines leaving Post Falls are 60,000 volts; in the years I testified to the number of kilowatt hours that were produced at the Post Falls plant has increased each year. In 1909 there was an increase of a little over 20 per cent; in 1910 there was an increase of about 18 per cent. Part of the wire that is used on the transmission line from Post Falls to Shoshone County is number 0 copper, and part of it is number 00 aluminum; part of the wire from Post Falls to Spokane is number 2 copper, and part of it is number 0 aluminum. We have had during the time I have been employed a second line to Spokane, and we have a second one to Shoshone, which also supplies the Palouse country; that is held as reserve; in case of trouble in one line we use that. During the last three years we have been furnishing power over one of those lines to the Palouse country. I can't tell you how much power. I would have to go to the records to find that. I can from our records state the amount of power furnished from the plant to the Palouse country in the last three years. It took me about six weeks to get the information I testified to yesterday as to the amount

(Testimony of John B. Fisk.)

of kilowatt hours furnished to Shoshone County each year, and to Mr. Martin and Mr. Strathern and to the Kootenai Power Company and the balance that was sent to Spokane. I figured the amount furnished to Shoshone County and to Spokane; that is all we figured; we have at times furnished other power in addition to those places I gave yesterday; the entire number of kilowatt hours that had been furnished in the last three years by that plant. We included the amount of electricity furnished to the Palouse country in the power delivered to Spokane; as a general rule, we supply [333—49] most of the Palouse country from Little Falls, occasionally a little from Post Falls. At the same time, when the amount supplied to Spokane is, to a certain extent, estimated, and the amount supplied to the Palouse country would be a very small amount, it could be accurately ascertained, but it would take a long while to do that, but I included in the amount sent to Spokane in my examination yesterday. The amount I testified to yesterday was the entire output of the plant.

Redirect Examination.

(By Mr. GRAY.)

All the time we are shipping power from Little Falls into Shoshone County; we have been doing that for a good many months; the object in having the plants tied together is so that we can divide the power between the different plants, and in case of injury to one or the other the other plant picks up the load. I believe on one or two occasions when we have had

(Testimony of John B. Fisk.)

trouble on our lines between Post Falls and the mines we have sent all the power to the mines from Little Falls; this is an emergency service.

Under my supervision comes the question of maintenance of the dams, buildings and machinery at Post Falls. I can give the actual cost of maintenance of the buildings and machinery at Post Falls for the years 1910 and 1911; I get this information from the charges made on the books of the company against our maintenance account, from the original records. The maintenance charge covering the buildings, machinery and the dams was \$10,587.45 for that year, the cost of maintenance on the transmission lines was \$15,827.85; those are the lines both in Shoshone and Kootenai counties. [334—50] In the maintenance of machinery there are generators and exciters, the step-up and step-down transformers, switchboards, and electrical appliances, water-wheels and governors, and miscellaneous equipment, which would include pumps and motors. The buildings would include station building itself, the store building, the operators' houses; we charge the repair of the exciters to maintenance; if we break a brushholder, we charge that to maintenance; any repairs made on the exciters are charged to maintenance. All our expense in the maintenance of transformers is cleaning the water-cooling coils; we have to clean them at regular intervals, and sometimes it costs quite a little money to do it. In case we have to put in any new coils that is charged. I have every reason to believe those amounts are correct; to the best

(Testimony of John B. Fisk.)

of my knowledge they are absolutely correct, but I do not know. In other words, those amounts are placed on the books of the corporation by various bookkeepers and by different men in charge, and amounts are placed in there that I know nothing about. It is not a fact that there is only a very small proportion of the different figures and accounts that I have testified to that I know are correct.

All of the larger items I know about personally, I would estimate 75 per cent. The small amounts I don't pretend to keep track of the details of. Part of the amounts I have given includes the transmission lines running from Post Falls to Spokane; the part from Post Falls to the state line I have those amounts only partly segregated. Part of the amount expended on the line between Post Falls and state line is pro-rated by mileage; the amount I have charged for maintenance to the transmission lines running from Post Falls to Shoshone [335—51] county includes the entire lines. The testimony I have given in regard to the maintenance of the machinery and buildings is based entirely upon the records of the company. I have not secured any amount in these various sums I have given in the way of depreciation. I did not keep that item at all; I have nothing to do with it. .

[Testimony of Frederick Burbridge, for Plaintiff.]

FREDERICK BURBRIDGE was called as a witness by the plaintiff and testified as follows, on

Direct Examination.

(By Mr. POST.)

My name is Frederick Burbridge. I am a mining engineer and have been engaged in that profession for about 26 years. I am familiar with the mines of Shoshone County and have been for about 24 years; from 1893 to 1901 I was in the employ of the Bunker Hill & Sullivan in various capacities, starting with them as assayer and winding up as manager of the Frisco mine, and also assistant manager of the Federal mines. I have been president and manager of the Coeur d'Alene Development Company, operating in that district, and then I have interests in some other prospects around about the country.

I am aware of the fact that the Washington Water Power Company furnishes power for the mines in the Shoshone County. I was one of the contractors with them on their first installation. The mines of the Coeur d'Alene district, of course, are no different from those of other districts in that their life is uncertain factor; they have no stated life; some of the earliest developed mines there were the Tiger-Poorman mines at Burke, which had an active career for about [336—52] 19 years, and then were shut down and abandoned, and have remained shut down ever since, since 1907. The same is substantially true of the Frisco mine; that was in operation for about 18 years, and shut down in 1907, and has not

(Testimony of Frederick Burbridge.)

been reopened. Both of those mines—the Tiger-Poorman and the Frisco,—were customers of the Washington Water Power Company, and used power up to the time of their shutting down, and then, of course, had to abandon their contracts. The Tiger-Poorman was a large property, as also the Frisco. The Coeur d'Alene Development Company was not as large as the others but had a life of 4 years. The Tiger-Poorman ended about 5 years ago, as also the Frisco and the Coeur d'Alene Development Company about 7 or 8 years ago. During the last 7 or 8 years I think no other large property in that country ceased to produce.

The facts are, in connection with the Morning mine, that the mine is on the ragged edge all the time. It is never a large profit maker, and only makes a profit when the prices of lead and silver are high, and if the price should decline materially it would have to shut down. There are two other mines in the district which have been very large producers for a great many years, but their end is near. It is reported in the annual report of the Federal Mining Company that what they call their Mace mines, the Standard and Mammoth, are nearing their end.

The Federal Company at Wardner had certain ores above a certain level reserved in settlement of its disputes with the Bunker Hill & Sullivan, and those and others are approaching their end. In another year or so they will probably [337—53] have worked that ground out. The Hercules is a large

(Testimony of Frederick Burbridge.)

mine that has come into existence as an active producer during the last ten years, and the Hecla also, although it was a producer in a small way prior to that; the Hecla's career has been practically within the last ten years, during the last five years the only mines that have come in of any importance are the Stewart and Caledonia and Ontario, all of them in the Wardner District. None of those can be classed, so far, as a very large mine. The mines that we hear most about in the Coeur d'Alenes are those that have been large and steady producers. There are a great many others who have brief unprofitable careers and are very little heard of. In a general way, I may say that a mine that has a life of ten or twelve years is a pretty good mine. Some of those up there, as I have said, have had a career of 19 or 20 years. The Bunker Hill has been in operation over 20 years, those are exceptional mines. The Hercules mine will probably have a life of 20 years, but I don't know of any other of which I could predict that.

There has naturally been a steady and rapid increase in the consumption of electric power there, because, prior to ten or twelve years ago, there was none of it used, and they built their line under a contract of a minimum of 1500 horse-power, and the mines that took it first began to increase their consumption, and other mines gradually came in until practically all the producing mines are equipped with electricity. Their growth will not be as great in the future, and whether it will grow at all I am

(Testimony of Frederick Burbridge.)

not able to predict; I rather fancy that it will not. I think that because the Coeur d'Alene country has passed the high-water mark of its productivity. [338—54] The annual production has been decreasing.

Cross-examination.

(By Mr. ELDER.)

It is not a fact that the production of the mines of the Coeur d'Alenes have increased up to the present time; they have been decreasing about five years. A great many of them use electricity. I do not know whether there has been a steady increase in the demand for electricity, but I know it has been a great deal more than it was a few years ago, and the only reason that I have based my opinion on that there may not be in the future a demand for electricity is that I believe the mining country has passed its high point. I am not now working for any of them. I am a consulting engineer and open to engagement by anybody. There are a great many of good mines in that district yet; it is one of the noted mining districts of the country. I have considered the mines which have been discovered right along in that district that have come in within the last few years; there have been a great many come in in number but not so much in production; there are possibilities for the district, most assuredly. If it were not for the fact that there are those possibilities, I should say the district would be dead and forgotten in 20 years.

**[Testimony of John B. Fiskén, for Plaintiff
(Recalled).]**

JOHN B. FISKÉN was recalled and testified upon

Direct Examination.

(By Mr. GRAY.)

We have a large number of substations in Shoshone County; the maintenance of the buildings for substations there was [339—55] \$110.97 and of the apparatus \$4,287.87. In 1911 I think we had 11 substations that year. In round figures it amounts to approximately \$400 apiece.

Cross-examination.

(By Mr. WERNETTE.)

I have orders showing all of the details of the material, in regard to the maintenance of the substations in Shoshone County, and a lump sum on the labor. I have the payrolls and the distribution sheets that show the details of the labor, with the names of the men, the hours they worked, and the rate. I do not know of my own knowledge as to whether those are correct. I do not know who made the entries on the books. I do not know when they were placed on the books. I am testifying from what the records show.

Redirect Examination.

(By Mr. GRAY.)

The records are the original records of the company, kept reasonably contemporaneous with the expense.

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES)

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Appellant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WANNACOTT, as Assessor
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County, Idaho, and His Successor and Suc-
cessors,

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VOLUME II.
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Upon Appeal from the United States District Court
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Upon Appeal from the United States District Court
| for the District of Idaho, Northern Division.

[Testimony of J. W. Mackey, for Plaintiff.]

J. W. MACKEY was called and sworn on behalf of the plaintiff and on

Direct Examination.

(By Mr. GRAY.)

My name is J. W. Mackey; residence, Spokane; head bookkeeper of the light and power accounts of the Washington Water Power Company. I have been working for them in that capacity 12 years in July. I have had charge of the consumers' ledgers for the Idaho business from Post Falls. I have charge of all those books, and have gone carefully into them for the [340—56] purpose of determining the gross revenue from all sources in Idaho from the plant in each of those years; for the year 1908 the total gross revenue in Idaho was \$259,851.73; for the year 1909, \$246,332.13; for the year 1910, \$283,020.02. On

Cross-examination.

(By Mr. ELDER.)

There are about 56 accounts showing the different parties in Shoshone County furnished power during the year 1908, and the rate charged to each party. No. 1 is based on a 400 minimum K.W.; the minimum charge is \$1199.70 a month, with a minimum consumption of 156,600 kilowatt hours. The excess over and above that amount is figured at .0112 per kilowatt hour. The bill is figured on the basis of kilo-volt ampere. No. 2 is the same rate. The K. W. hours are furnished by the superintendent of light and power, furnished to me, as bookkeeper. I

(Testimony of J. W. Mackey.)

figured those from the kilowatt hours, and the K. V. A.'s furnished by that department. I took the total amount of power as furnished to me by the company and figured out the rate, and got the amount. I can give you the amount, but I would have to figure it up; there are 54 accounts and there are 12 items to every account, in K. W. hours. The rate is not the same for all those different parties, everything showing the transaction is in this book; the book shows the rate; I will take that book and go over it with you during the noon hour. Our contracts in Shoshone County for power provide in each instance a minimum charge. The average rate charged on the K. W. hour is figured at 0077 and 0076. I have not on our books any charge for sale of power to H. M. Strathern or to Mr. Martin. I was not present at court when Mr. Fiskien testified. If there was 1,106,181 K. W. hours [341—57] delivered to Mr. Strathern in 1908, I have not on my books any record of that, or any credit to this plant for that power, and if there was 246,415 K. W. hours delivered to Mr. Martin, I have no charge against him for that amount. There were no credits allowed this plant on our books for any delivery of electricity to any person outside of the State. It simply pretends to credit or charge persons or customers in the State of Idaho, where we delivered them power from the Post Falls plant. I can get the amount of charge in K. W. hours from the superintendent of the electric power department, from one of his offices. I do not know where that power was

(Testimony of J. W. Mackey.)

delivered from. I know because I asked the superintendent of the company and he told these items were delivered at Post Falls to the separate consumers. I do not know that of my own knowledge. My records are made up from figures compiled by the superintendent's office and sent to me to be calculated. I do not know what they generate at Post Falls. I am not an electrical engineer; I know nothing about that. The same is true in regard to the gross receipts for 1909 and 1910; the rates charged in 1909, they changed when the contracts expired,—and a portion changed in 1908 as I showed you on the ledger, with several consumers; when the contracts expired. I did not figure the minimum on the new rate.

Redirect Examination.

(By Mr. GRAY.)

The book I have here is the customer's ledger, individual customers in the State of Idaho; that represents the charges that were made and the collections made from our customers in Idaho. I have separate on those amounts the distribution [342—58] during those years, gross receipts, between the Coeur d'Alene's and Spokane & Coeur d'Alene Railway, and the other items. In 1908 the mines was \$237,209.72; Kootenai Power Company, \$1,593.51; Coeur d'Alene Railway, \$21,048.50; for the year 1909 the mines was \$218,897.31; Kootenai Power Company, \$1,631.74; Coeur d'Alene Railway, \$25,803.08; 1910, mines, \$252,092.25; Kootenai Power Company \$1,678.39; Coeur d'Alene Railway, \$29,249.38. The

(Testimony of J. W. Mackey.)

minimum charge to the Spokane & Coeur d'Alene Railway for 700 horse-power was \$1,116.66, which was \$20 per horse-power per annum. I cannot give that to you per K. W. hour.

Cross-examination.

(By Mr. ELDER.)

In these items of 1910 I have given, that is the total amount of power delivered in Idaho, the same as 1908 and 1909. I got the figures from the ledgers from the same department. I got the other figures from the superintendent's department. I do not know of my own knowledge whether those figures were correct. I have the book of original entries as furnished by the superintendent's department; I haven't that here. Mr. Fisker is in charge of the superintendent's department.

Redirect Examination.

(By Mr. GRAY.)

Those figures are copies from the meter readings into the book made contemporaneous with the furnishing of that information by Mr. Fisker.

[Testimony of C. F. Uhden, for Plaintiff (Recalled—Cross-examination).]

C. F. UHDEN was recalled and testified as follows, on

Cross-examination.

(By Mr. ELDER.) [343—59]

The lay of the land and the location of the channels was acquired by us with the purchase of the Post Falls property. There had been a survey and

(Testimony of C. F. Uhden.)

plans drawn for a plant at that place. I said our company got all the information they desired in a few days there; the reason for that was that we had acquired plans and specifications from someone else; those plans and specifications were turned over to us at the time the purchase of the property was made; as to whether there was any particular value place on them I could not say; I know of no promotion charges being made; I will be unable to give the total amount that was expended by the company in their preliminary work after they acquired the land, for the simple reason that we started the work on the different channels at different times, and while the engineers were working on one channel they were taking such notes as we required at the office at times for the other channels. To start with, we had very little—there was very little engineering necessary. The amount that was expended by the company for preliminary engineering and survey cannot be obtained.

[Testimony of D. L. Huntington, for Plaintiff.]

D. L. HUNTINGTON was called as a witness on behalf of plaintiff and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

My name is D. L. Huntington; residence, Spokane; I am president of the Washington Water Power Company, and have been connected with the company nearly 18 years, first as treasurer, afterwards as general manager and secretary, then as

(Testimony of D. L. Huntington.)

second vice-president and general manager, first vice-president and general [344—60] manager, and president. I am an electrical engineer. I was educated at the Sheffield Scientific school of Yale University; then I was a year in the shops of the General Electric Company; then the Thompson-Houston Company; then I was assistant engineer in the Philadelphia office of the General Electric Company for several years; then I came to Spokane. My subsequent experience has been with the Washington Water Power Company; in the course of that experience I have had charge of the property of the company there during a large part of the time I have mentioned. The figure which we assumed in the value of the power which is shipped from Post Falls to Spokane and credited to the Post Falls plant was .6 of a cent per kilowatt hour. I think that is a fair price to charge the company with and credit the Idaho property with; I think it is higher than it might be considered, but in order to be on the safe side we considered it .6 of a cent per K. W. hour.

At Post Falls we sell certain power to the Coeur d'Alēne & Spokane Railway Company, or the Inland Empire Company; that power figures a little over .5 of a cent per K. W. hour. I will explain to the Court why I have not taken .7 of a cent per K. W. hour and have taken .6 of a cent for power delivered to the mines in Shoshone and in charging the company and crediting the property with the power taken to Spokane, by saying, we have assumed that there was practically no expense of transmission and

(Testimony of D. L. Huntington.)

distribution, such as there is in the other work in Shoshone County, and so on, and have only figured against it the cost of line losses to Spokane, and the cost of conversion, when we figured the price we got out of it. We found the price was a little higher than what we were charging other large customers for power, and that was the [345—61] basis upon which we made the prices. There is no cost of distribution figured in this particular amount; that was why we figured it as low as that. Mr. Strathern, as you mention is, is the Post Falls Lumber & Mfg. Co. Then there was the Martin matter, which I think was in Martin's name; when we first started in developing power at Post Falls the people from whom we purchased the property there did not own all the water rights at Post Falls. Mr. Strathern or his successors had purchased, prior to our purchase, portions of this property, which we needed for the construction of our dams in North Channel, and we made an arrangement with Mr. Strathern whereby he was to transfer to us the land which we required and his water rights, and in return we were to give him a right in perpetuity to an agreed amount of horse-power delivered at the Post Falls plant, and in addition to that we were to pay the cost of moving his saw-mill, which occupied the ground, to the site upon which he afterwards built it. There was to be no charge made against him for the power. In other words, we simply gave him electric power in lieu of the water-power which he owned, and paid the cost of moving his mill to where it could be oper-

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(Testimony of D. L. Huntington.)
ated in the new location.

Strathern got 250 horse-power, that is, at Post Falls, the Post Falls Lumber & Mfg. Co., and Martin 125. I think there were two contracts on that Martin business. I think Alice Martin owned part and some other Martin in the same family owned part, but the total of the two was 125 horse-power. The Martin transaction was of a family nature; they were part owners, just as Strathern was, and we gave them a right in perpetuity to that amount of power. There are no [346—62] charges at all against them. We had to pay them in addition to the power, we paid them \$1500. Whether that all went to Martin or Alice Martin, I don't know. Such power as has been delivered to them during the years 1908, 1909 and 1910, is power delivered under those contracts, for which we received no compensation.

The cost of maintaining a plant or machinery of any kind is never indicated by the exact particular expenditure of any particular year. A machine may be gradually becoming in need of repair and no expenditure made on it for several years; then there may be a very material amount to be expended for repairs, and if, for instance, the first three years of the operation of the plant it continued to wear and become gradually in need of repair, if you followed the plan of only considering the expenses that you actually met in that year, you would arrive at the conclusion that there were no expenses of maintaining a particular machine or plant, whereas, as a matter of fact, you are accumulating a maintenance that

(Testimony of D. L. Huntington.)

has got to be paid perhaps the next month or the next year. That is the reason why I think the determination of the costs of maintaining a plant should take a period of time of sufficient length to determine what the average cost of maintaining is.

I mean by the life of a plant in taking any particular piece of machinery or apparatus, that time which elapses before it should, for various reasons, be replaced. I think in determining the maintenance the average life should be taken for the life before the machine will have to be displaced and replaced. Depreciation is a fund which should be set aside for the replacement of apparatus which has [347—63] become useless for the reason that it is either worn out or inadequate or obsolete, for the purpose for which it is to be used, and such fund would be in addition to the expenditures which would be made from time to time to maintain the machine, in the sense of maintenance, during its life. With reference to the dams of the company at Post Falls and including within that the fixtures which are attached to the dams, the gates, and all of the apparatus connected with the dams, 2%, in my judgment is a fair per cent to be allowed and charged against the revenue per annum for depreciation on the original cost of construction. I take the original cost because I think that on structures of the kinds—dams of the kinds we are figuring on, it wouldn't be a safe proposal to figure that more than 50 years of use is ahead of us for those dams. The dams might last through a period longer than 50 years, but they might

(Testimony of D. L. Huntington.)

be inadequate or obsolete, or not fitted to the use at that time. There would be certain portions of the sum which would have to be set aside to take care of their actual disintegration, etc., but I don't feel that it is safe for us to carry,—or look into the future beyond 50 years, because of the change in the art, and the possibilities, and in view of the probability that at the end of that time it will be inadequate, or be replaced by some new method of producing power, or some other unforeseen invention or means of arriving at the same end.

I have allowed 3 per cent depreciation for the buildings for the same reason I have given; for the machinery at Post Falls I have allowed 5 per cent, figuring a lifetime of 20 years. The reason I have chosen a larger figure than on the others is that the machinery in a plant is the portion which [348—64] most quickly becomes obsolete. Most of the replacements of machinery to-day in power plants are for the reason that they are obsolete, rather than that they are worn out. With reference to the transmission lines I figured 8 per cent for depreciation on the whole structure, based upon my experience and acquaintance with the science I believe that to be a reasonable sum. There is a question in my mind whether that is high enough. The machinery in the substations in Shoshone County I should say ought to be figured at about 10 per cent; the buildings are of a comparatively cheap class, and I should think possibly might be figured at 5 per cent. 5 per cent for the entire item in my opinion would not be high

(Testimony of D. L. Huntington.)

enough. That class of apparatus is almost sure to be replaced within ten years; practically everything we have had of that kind has had to be replaced within ten years, because of obsolescence or inadequacy. I did some figuring to see what would be a reasonable sum for maintenance and general office expenses to be charged against the revenues of that plant per annum, and assuming that it were operated as a separate property, I figured in the neighborhood of between \$21,000 and \$22,000 per annum. I have my details of that if you want it. Those figures were passed upon taking the Idaho business of the company and figuring on it as though it were run as a separate business. 5 per cent would not be excessive depreciation upon the machinery of the building near Cataldo. I think the apparatus ought to be charged off at about 10 per cent, and the building at about 5 per cent. There isn't any class of apparatus we have that has to be replaced as frequently and as quickly as our switching apparatus. [349—65]

I am familiar generally with the customers, and the class of the business which we serve from Post Falls. The principal part of our business is supplying power for mines. From the standpoint of an electrical engineer and my acquaintance generally with the business, we consider it a relatively hazardous business. There are several power sites within a reasonable distance to the mining district which we serve, either lying idle or in the course of development, from which competition might be expected. There are several other power sites. The nearest

(Testimony of D. L. Huntington.)

large water power is Thompson Falls, about 35 miles east of Wallace; that is in the course of construction now; there is another large power in Kootenai River, at Kootenai Falls. There are a considerable number of powers of fair size along the St. Joe River to the south and west of Wallace. There are also water powers in the State of Washington near the Idaho line, to the north of us.

Mr. MacCalla's position in the years 1905 and 1906 was assistant to the general manager, I think. Mr. MacCalla came to the company in 1903 at \$250 a month,—as I remember \$3,000 a year, and I don't remember exactly, but we raised him pretty steadily year after year. I imagine it must have been in the neighborhood of \$5,000.00 during the construction of this plant.

The first portion of the lands surrounding the Post Falls plant and were purchased from R. K. Neal and associates; Mr. John Finch was the principal associate, Mr. A. B. Campbell of Wallace had some interest. I think White and Bender each had a little interest. I always understood them to be [350—66] men of means. At the time that was sold to the company there was delivered to the company engineering plans and surveys showing the contours made by B. C. Riblett, and they were turned over to us for the consideration paid for the property; that is, they went with the purchase. Mr. Riblett is a well-known engineer in Spokane, and was at that time. Those plans were in considerable detail; the purchase price covered the plans. Mr. Riblett has

(Testimony of D. L. Huntington.)

not during my time been connected in any way with the company. Beginning in somewhere in the early '90's, he did some work for the Spokane Street Railway—I am not positive about that—in surveying and laying out tracts in and about Spokane. I was familiar with the fact at the time we purchased the property that he was an engineer of standing and accomplishment. In my judgment, based upon my acquaintance and experience with the character of the business which we serve from the Post Falls plant, my general acquaintance with the country surrounding that plant, and the resources of it, we should earn at least 10 per cent as a fair return upon that investment, that is, not over depreciation. Absolutely net return on money invested. It is, I think, ordinarily conceded that in the business of supplying electric light and power in ordinary communities, cities of fair size, and so on, and doing a business of that kind, that a return of eight per cent is a moderate, a reasonable, rate, and we feel that the hazard of the business in the Coeur d'Alene's, where we are so at the mercy of the possibility of failures of large customers, mines playing out, changes of price of lead, and the tariff, and considerations of that kind, that the business is relatively hazardous, and that we should receive a higher rate than on an ordinary investment, and we [351—67] also believe that, for the reason that investments in other kinds of securities in this community are, relatively speaking, eight per cent and up, for good mortgages and investments of that character, we feel that this is a

(Testimony of D. L. Huntington.)

much more risky business than that, and therefore we think we are entitled to a return materially greater than the ordinary going rate for mortgages and so forth in the community.

In figuring depreciation I took the original cost. I figured straight line depreciation, that is, not compounded. I figured that, roughly speaking, the life should be divided into a definite number of years, and that the property should be figured as depreciating that much—that proportionate amount each year.

Cross-examination.

(By Mr. ELDER.)

I have some notes showing the amount of power delivered to Spokane from the Post Falls plant during the year 1908; it amounted to 8,532,000 K. W. hours after taking out the loss of transmission. I figured the loss at 10 per cent; that is the basis the .6 of a cent should be based upon, the amount which was delivered to be used in Spokane after the deduction of the losses. The loss is not only a transmission but also of conversion to the form of energy in which we sold it at Spokane.

We started that year at Post Falls with 9,480,000 K. W. hours, the memorandum that I have, and we actually figured sold 6,399,000; that is figured at six-tenths of a cent per K. W. hour. I cannot give you the company's net profit on that last amount. I don't believe I could determine that from our books. This power that was generated at Post Falls and [352—68] delivered to the company in Spokane was sold in Spokane at the switchboard. When we speak of

(Testimony of D. L. Huntington.)

distribution we mean carried from our power plant to the places of the customers, we furnishing the investment necessary to distribute, and what I mean is that we had no distribution expense whatever. I mean by sold at the switchboard is that we have had no distribution expenses whatever; in other words, it was wholesale to the customer at our station switchboard, where the conversation was made. This power was delivered and turned on to the bus-board at Spokane with our other power; a part of that power might have been used for local customers.

What we have endeavored to do here is this: After the power goes to our bus-bars at Spokane and is started to be distributed to customers, it becomes involved in the question of price and cost with the matter of distribution in Spokane, which, in some cases is fairly cheap, and in other cases is very expensive, and in order to determine the price at which that is sold to other customers, it becomes an exceedingly complicated matter as to how much should be added to the raw price, so to speak, of the power for this very complicated distribution system, which is not only complicated, but is so different for different uses. Therefore, what I have endeavored to do is to give a price for the power undistributed, and keeping out of it the elements of distribution, in order to give some reasonable idea of what it was worth at Post Falls. That is about as far as I can tell you about the distribution of it. I would be morally certain that the Washington Water Power Company did not make a net profit which

(Testimony of D. L. Huntington.)

would amount to more than .6 of a cent per K. W. [353—69] hour to the power delivered to the company. I don't know what profit we made, I can't tell you that, but I am morally certain that it was no such figure as that. We would be very fortunate if we could get a very small fraction of that. I do not think it is a fact that we make more on the power delivered at Spokane from the Post Falls plant than the amount allowed .6 of a cent. From our records in Spokane I don't think I can determine approximately the amount earned by the Washington Water Power Company on the power delivered in Spokane from the Post Falls plant. I think possibly I can determine the proportion of power which we distributed in Spokane delivered from that plant. I can determine our total earnings in Spokane, but cannot determine the proportion that is due to the Post Falls plant because there are a great many other elements that have to be added to it before you come anywhere near it. For instance, we deducted 10 per cent for line losses and 25 per cent for loss in converting and placing with the other power; it is not then ready for delivery to our customers, because it has got all the distribution features to be put on after that. We have an immense investment for distribution and a very exceedingly complicated one, with different classes of business, some of them connected with the same conductors, some on dissimilar conductors, some at high voltage, some of it low voltage, some on overhead distribution, and some on underground distribution, which is exceedingly complicated. It is a

(Testimony of D. L. Huntington.)

fact in determining the net earnings that all the cost have been deducted. I can't determine the proportion that is due the Post Falls plant, for the reason that it is [354—70] so complicated that I don't think we can get at the result; we have tried it a good many times; we think the transmission loss is about 10 per cent; we believe we actually lose that much, we don't know. I know how much power is generated at Post Falls and how much is delivered at Spokane; part of it goes into other distribution systems connected between the two; the two into the Palouse country and Big Bend; that it goes into the Palouse country and the Big Bend country does not mean that it is credited to the Post Falls plant, it may come from Post Falls or Spokane, and usually goes to Spokane before it is delivered. I cannot tell the exact amount because it isn't a sufficiently exact science to do it. We can estimate it, and we believe we come pretty close to it, but the network of the system is so complicated, and so interconnected with one plant and another, and one transmission line and another, that we don't get an accurate account of it. We deduct for transmission loss to Shoshone County about 10 per cent, which is too little; as a matter of fact, the losses up there are greater than that. I should say the losses are greater on the Shoshone County, and if we are transmitting on what we call our No. 1 line they are greater yet; if we are transmitting on our No. 2 line they are smaller than on the No. 1 line, but I should think 10 per cent was certainly a moderate estimate.

(Testimony of D. L. Huntington.)

The amount delivered to Spokane in 1909 on the same basis we have been talking about, at which we figured the six-tenth of a cent was ten million, seven hundred off thousand K. W. hours. I cannot determine from our records the amount that was owned by the company on the power that was delivered from Post Falls that year. I wish I could. The amount for 1910 [355—71] was twelve million two hundred odd thousand K. W. hours. The amounts I gave for 1909 and 1910 are the amounts figured at .6 of a cent, after we had deducted the line losses and conversion losses.

I said we have contracts with Mr. Strathern to deliver to him practically 250 horse-power. I know what he gets for the power. I suppose that is the best evidence of what it is worth. He gets \$16 a horse-power a year for it. To get at the market value of his right, you will have to take what his income is from it, and capitalize it at some sum, say ten per cent, and then discount it pretty heavily, for what one would pay for it would probably be less than that. We didn't consider that property from a value standpoint at all when we purchased; we figured that we were giving him all that we got, so far as power was concerned. It was all one transaction and we simply put into two contracts. There was not a total value placed on the property; the amount we paid Mr. Martin and Mr. Strathern was in consideration of the cost of moving their apparatus from the place where it was to a new place. It wasn't a consideration for the power. We felt then, and feel

(Testimony of D. L. Huntington.)

now, that we gave them back all we got; that we were absolutely no net gainers as to the amount of power.

We did not enter into a contract with the Cable Milling Company; we did not agree to deliver them any power, nor with any other person in Idaho in connection with the Post Falls plant. We paid an amount for moving the mill, \$15,000, that is included in the \$109,000. We paid Mr. Martin \$1500, and that is included in the \$109,000. I am of the opinion that maintenance should be figured on a number of [356—72] years. I don't agree that the best way to arrive at the actual value of that plant at the present time is to determine the amount which we have expended there in maintenance, and the amount we have expended on the original cost by our books. If I were going to buy that plant, I wouldn't want to know just what it happened to cost to maintain the plant last year. I would want to know what it was going to cost me to maintain it after I owned it. Maintenance is that expenditure which goes to keep a machine or apparatus or building in reasonable repair, that is, in serviceable repair. It will not ordinarily keep a machine from becoming obsolete, but it keeps it in service for the kind of service for which it was originally intended. Depreciation, on the other hand, is an allowance which takes care of those things which are over and above the question of keeping in ordinary repair. For instance, obsolescence—A machine may be kept in good running repair throughout its whole life, and yet by the end of its life it may be utterly obsolete and of no use for the

(Testimony of D. L. Huntington.)

purpose for which it is intended. Maintenance doesn't take care of such charge, therefore it has to be charged to depreciation. We have a sinking fund only in the sense of accounting for it. The amounts set aside are reinvested in the property. We have a sinking fund for another purpose, but that is separate thing. The sinking fund does not take care of depreciation I last referred to. I think it should be properly called a sinking fund, but the funds are invested in the property, and not in outside securities. Under our system the fund is suppose to take care of the value of that machinery within 20 years, if it is a 5 per cent depreciation. The purpose of the sinking fund is to take care of the depreciation, and then [357—73] we reinvest that money in other parts of our plant, for instance, if we set aside \$350,000 for depreciation, we don't actually take that money out or put it in the bank or invest it in securities, but if next year we are going to build a pole line into Bonner County, we may use that money to build that line.

I said I thought the dam would probably be inadequate or obsolescent within 50 years, that I didn't think it was a reasonable thing for us to assume that it would not be, and that some other form of dam or other form of machinery,—I don't remember my exact words,—should be provided for within a period of 50 years. I think this part of the business is quite hazardous; the fact is that we are at the present time building a larger plant than the one at Post Falls, but not the one for this district, we don't expect to

(Testimony of D. L. Huntington.)

serve this district with it. We have the Post Falls plant, Spokane plant, the Little Falls plant and the steam power plant at Spokane, and we have another much larger plant in construction at Long Lake. All of the plants except Post Falls are in Washington.

There are a number of reasons why I consider the business hazardous. Our business being practically all, or very largely, with mining companies, is with a character of customers who may run out of ore, the mines be discontinued, leaving you with the investment on your hands. We have had a number of such cases. They may become insolvent and fail to pay their bills, of which we have a number of cases. We consider that we are doing business with people who are largely in a speculative business, and therefore any business which we might get from them is naturally speculative, and therefore hazardous. I [358—74] can illustrate that with actual cases of our experience in the Coeur d'Alenes, if you want them, a whole lot of them.

In some cases the business developing hydraulic water power is considered a safe and good business; in some it isn't. There have been a great many serious failures of large water companies in this country. I can name a lot of them. The Southern Colorado Power Company is one of very large size which has been practically a total failure. The large development at Massena, New York, is an old state, with large population, is an absolute failure. I know the reason of the failure of the Central Colorado Power Company. In that case they had

(Testimony of D. L. Huntington.)

absolutely inadequate knowledge of the cost of developing the power, and they provided inadequately in the amount of money originally. They found afterwards that they would have to put a great deal more money into it to complete the enterprise, and when they had done that they found the business was not sufficient to pay a return on the money invested, although it might have paid on the amount originally contemplated. The class of customers, I think, was practically mining business, the Cripple Creek district.

I consider that the company is entitled to an earning of ten per cent. The money with which the company was bonded cost more than that because that is the net bond rate. The bonds are not sold at par; sold at 94. I think it is a fact that our power load in the Coeur d'Alene mining district has been steadily increasing in the last number of years. There has been fluctuations in income—some years less and some more, but I think the actual amount of power sold has increased [359—75] year by year, but with a downward scale of results per kilowatt hour.

Being questioned by the Court, witness further testified: Six-tenths of a cent per kilowatt hour would be a reasonable allowance for the power we take to Spokane; it is more than we are getting from the Inland Empire people. We are getting from them five-tenths of a cent, and we are putting this at six-tenths of a cent. We are allowing about 20 per cent more here than we are actually getting. We don't

(Testimony of D. L. Huntington.)

sell to the Inland Empire company on the rate per K. W. hour; our contract was made in another way, on the basis of so much per horse-power per annum, but in dividing the rate by the number of hours we sell them we are able to get at the figure per K. W. hour. It is .5002, I think. Also in our business in Spokane we own a street railway and we make a close charge on our books in order that we may know whether our street railway pays or not, and we make a close charge there of 6 of a cent per K. W. hour, as nearly as I remember. That is another reason why we chose this figure. We sell to the Inland Empire Railway at .5¢; that is sold in Spokane; it is what is called the Spokane Traction Company, but it is part of the Inland Empire Company. We deliver part of the power to them at Post Falls and part of the power we deliver at Spokane. For the power in Idaho there should be no deduction for losses for that portion sold to them at the Post Falls plant, because it is delivered right to them; there are no losses of transmission or conversion. But that portion which we take to Spokane and sell to them there, we sell a great deal more than is covered by this—that is converted there and sold to them at our station switchboard at Spokane. The charges are lumped. [360—76] It isn't a fair arrangement, and it is one that we had a great deal of difficulty in clearing up.

On examination by Mr. WERNETTE, witness continued: They have a minimum total contract, that they shall not take less than a certain amount, but

(Testimony of D. L. Huntington.)

it is not in a sense of a standby, but it is simply that they are allowed to have so many horse-power, and they agree to pay a minimum of so many dollars per annum, whether they use it or not. As a matter of fact, they do use it up to the limit, and supply the balance themselves. Our conditions with them are somewhat different than it is with private consumers. With retail customers it is very common to have stand-by charge collected.

Redirect Examination.

(By Mr. GRAY.)

It is comparatively simple, how we get at the amount of power that we credit the Post Falls plant with as going to Spokane, because we have meters at Post Falls which measure the total output, and we also have meters which measure the amount that goes out on the Spokane transmission lines; then the network begins, and from there on it is very difficult.

There was sold in Idaho during the year 1908, 30,918,397 K. W. hours, leaving an excess at the switchboard of 9,480,603 K. W. hours; in other words, we have charged to ourselves all of the excess over what was sold in Idaho, whether we sell it or not, no matter what is done with it we give them the credit for it on this computation. Even though, as a matter of fact, we might have an excess of power at Spokane and not use it, that plant is credited with all the excess over what is actually sold in Idaho, and that has been true during each of these years. The company has a material excess over the [361—77] demand in Spokane.

(Testimony of D. L. Huntington.)

Recross-examination.

(By Mr. ELDER.)

(Witness testified :) We are building a new power plant just below Spokane for future possibilities; it is to be completed some time in 1915. 746 K. W. hours represents a horse-power hour. There are 8,760 hours in a year, and by multiplying that by one kilowatt it will give you the number of kilowatt hours which one kilowatt hour produces in a year. In other words, one kilowatt of capacity will produce, if operated continuously, for one year 8,760 kilowatt hours. A horse-power is about three-fourths of a kilowatt hour; that is, 746 K. W. hours per horse-power. One K. W. hour would be about one and a third horse-power hours, or a horse-power hour would be about three-fourths of a K. W. hour, and if a K. W. hour produced 8,760 K. W. hours in a year, if you want to know the number of horse-power hours, that would be to divide it by .746.

Thereupon the plaintiff produced tax receipts of Shoshone county showing payment of taxes by the plaintiff to that county for the year 1908; the property in Shoshone county taxes in the sum of \$1664.00; for the year 1909 taxes in the sum of \$2,875.04; for the year 1910, taxes in the sum of \$3,211.00; tax receipts showing payment of taxes to Kootenai county, Idaho, for the year 1908, \$10,429.78; 1909, \$26,880.69; 1910, \$39,693.42; power lines in Kootenai county on which taxes were paid, \$183,000.

**[Testimony of John B. Fiskén, for Plaintiff
(Recalled).]**

JOHN B. FISKÉN was recalled to the stand and testified as follows: [362—78]

Direct Examination.

(By Mr. GRAY.)

Since I went off the stand this afternoon I have taken the records of my department, for the purpose of checking—of determining the maintenance cost on the property at Post Falls during the years 1911 and 1910. The books are all here. With reference to maintenance my duties are to make requisitions on the supply department for material required, and to make returns of the time spent by the men working on maintenance work. We keep a record of the time for the expenditures for maintenance in my department, not of the supplies; that is kept in the auditing department; the transfer ledger is where those items are brought together. I am familiar with the system of bookkeeping used for the purpose of keeping track of the maintenance items. I have had six years' experience in bookkeeping. I have gone over the transfer ledger myself at different times on various occasions. I am the person responsible in that company for the amount which is expended for maintenance. I have examined those books since the adjournment of court this afternoon. I have here a statement of the amounts expended for maintenance as shown by the records of the company, during the year 1910, on that project. I know of my own knowledge that these are the only books

(Testimony of John B. Fisk.)

that are necessary to arrive at the cost (transfer ledger and work order ledger). I find in the amount for maintenance of water-wheels and governors there is a mistake of two cents, as compared with the figures heretofore given, compiled by the men working under me. In dams and flumes I find a discrepancy of \$170.20, and I would like to explain that the dams and flumes maintenance are all charged to one account [363—79] covering all the dams and flumes of the company, and in order to state the amount for Post Falls, it is necessary to go through all the various items and separate them. This discrepancy of \$170.20 I might be able to find with further time, but so far I haven't been able to find it. This \$170.20 I find to be less than in the statement I read this afternoon. The total maintenance is 1910 according to the investigation I have made, as shown by the books is \$1289.90; that is on dams and flumes at Post Falls. The total for that year on machinery, dams and buildings at Post Falls is \$5,877.85. I have checked for the year 1911, except this item of dams and flumes, and I haven't the time to finish that. I find a mistake in maintenance of water-wheels and governors of \$1.00; it should be reduced \$1.00.

The maintenance for 1911, on everything except dams and flumes, for generators and exciters \$60.70; step-up and step-down transformers, \$923.52; switchboards and electrical appliances, \$3,695.63; miscellaneous equipment, \$36.04; water-wheels and governors, \$545.85; buildings and fixtures, \$839.89; oper-

(Testimony of John B. Fisk.)

ators' houses, \$582.18. My statement of the total for 1910 would be 2¢ off; I have had charge of the transmission lines and substations in Shoshone county for the years 1908, 1909, 1910, up to the present time. It is very hard to get accurately at the cost of the first line; the costs are mixed as to the lines and substations and right of way, etc. The total cost can be gotten at, but not separated. I can give the accurate cost on some of the transmission lines and substations, that is, the cost per mile; my notes I have are cost per mile. The part of it concerning which I know the actual cost is shown on the books [364—80] part of it is shown clearly in the books; the other part can be closely approximated.

[Testimony of Fred E. Wonnacott, for Plaintiff.]

FRED E. WONNACOTT was called and sworn on behalf of the plaintiff and testified as follows:

Direct Examination.

(By Mr. GRAY.)

The assessed valuation of the transmission lines of the Washington Water Power Company in Kootenai county for the year 1911 upon which taxes were paid was the Coeur d'Alene & Spokane line was put in at \$2,000.00 per mile; 180 miles, \$160,000, and 25 miles of the power line running north was assessed at \$1,000 a mile for 23 miles; the original assessment was 25 miles, but there was a reduction of 2 miles made before the Board of Equalization; that makes \$183,000.00 on transmission lines. This is the original assessment-roll; the charges were not made on

(Testimony of Fred E. Wannacott.)

this but were made on the books afterwards the corrections. There were a number of overflow lands, some of them easements and some of them fee lands, assessed against the Washington Water Power Company that year upon which taxes were paid; the assessed valuation was \$25 per acre in the first place, but the State board cut it 15 per cent. The fee lands were assessed just wherever they happened to be, the same as other farm lands. The entire amount of taxes were paid. I will get the list of the lands along the Spokane River between Post Falls and the lake, upon which taxes were paid. [365—81]

**[Testimony of A. J. Wiley, for Plaintiff
(Recalled).]**

A. J. WILEY was recalled to the stand and testified, on

Direct Examination.

(By Mr. GRAY.)

Based upon the cost of reproduction, I have calculated the annual depreciation upon the property at Post Falls, dams, buildings and machinery. The depreciation upon the dams I figured at 2 per cent upon \$244,143.78. I would like to explain that this is not the full cost of the dams, but is the cost of the dams as given in the original estimate, less the cost of excavation, upon which I did not estimate there would be any depreciation; that amounts to \$4,882.87. The depreciation upon the buildings is 3 per cent upon \$184,676.24, amounting to \$5,540.29; the depreciation upon the machinery is figured in two items,—one upon the power-house machinery and one upon

(Testimony of A. J. Wiley.)

the high tension machinery. The first item is 5 per cent upon \$422,155.53, amounting to \$21,107.77, and the depreciation upon the high tension machinery is figured at 4 per cent upon \$35,799.41, amounting to \$1,431.98. I have totaled those together, the annual depreciation which I allowed, the total is \$32,962.92, leaving out the values for land, the average percentage for depreciation on the balance of the investment according to the cost of reproduction as estimated by me would be approximately three and a half per cent. In my judgment that is a fair and reasonable depreciation to allow for that plant. I would like to make a correction in the figures I gave yesterday; in figuring the depreciated value of the plant I misread the figures so that the depreciated value should be 5 per cent, even less than I gave you. With this deduction the corrected depreciated value is \$817,402.79 [366—82] instead of \$822,402.79. From the standpoint of an electrical engineer, with the experience I have had, I consider an electrical business depending for demand upon a mining community being hazardous. I have heard the testimony that a greater part of the power sold in the Coeur d'Alene mining district, taking into consideration the character of the investment and the character of the demand, and my experience in power with conditions in the State of Idaho, I would say developments in Idaho, and my general acquaintance that 10 per cent was a reasonable and fair rate of net return upon such an investment of this electrical plant. I consider the fact that 8 per cent is an ordi-

(Testimony of A. J. Wiley.)

nary interest upon a good first-class mortgage security, and I thought this should pay at least 2 per cent more, on account of the hazardous nature of the business.

Cross-examination.

(By Mr. ELDER.)

The total amount of annual depreciation I gave is \$32,962.92. I based my opinion that this company should be allowed 10 per cent on the ground that good, first-class mortgages draw 8 per cent, and the hazardous nature of this business should be entitled to 2 per cent more. I have had considerable experience as an engineer in the construction of plants of this kind, but I don't claim to have a national reputation. I have never found that bonds placed on a hydro-electric water plant are the easiest kind of bonds to float. It is very difficult I find to sell bonds on hydro-electric plants. I should say the full rate of interest charged on bonds of hydro-electric plants is 6 per cent. In a great many instances they are issued at 5 per cent. I think the condition is rather exceptional where you could bond at 5 per cent. In making my reports [367—83] to clients in figuring on the rate of interest a hydro-electric plant should earn, I would take into consideration the nature of the country to be served. If it were purely a municipal service, I think that about 8 per cent would be all right, but where the element of risk is involved, where it is largely mining service, I think that I would not recommend less than 10 per cent. With regard to interest allowed, I allowed 2

(Testimony of A. J. Wiley.)

per cent to cover the hazard; it is a common practice in southern Idaho to get 8 per cent on mortgage security. I am not competent to say about a loan for a quarter of a million dollars. I think 2 per cent would be sufficient to cover the hazard. Bonds are usually issued for practically a sufficient amount to build the plant, and they sell for 5 or 6 per cent, but they are not issued at par. They never get par for them; they have to pay commissions for selling bonds. They are usually sold, in my experience, at about from 80 to 90 per cent and run for 20 years. Sales commissions are paid. I would think the actual amount realized on them would be between 5 and 7 per cent interest. In my experience, in plants the promoter of a company of this kind practically takes no risk so far as the investment is concerned. He promotes the enterprise and issues the bonds, floats them, and raises the invested capital, and the bondholders take the risk; that is customary. I should say approximately 7 per cent would cover all contingencies. In some instances they would be sold for over 90, but more nearly I should say at about 85 per cent.

[D. L. Huntington, for Plaintiff (Recalled).]

D. L. HUNTINGTON was recalled and testified as follows, on [368—84]

Direct Examination.

(By Mr. GRAY.)

The Washington Water Power Company has about \$5,000,000.00 of bonds issued; the total investment of the company is about \$20,000,000.00;

(Testimony of D. L. Huntington.)

the last bonds were sold at 94 per cent of \$100. I think that was in 1909; that part of the issue bears 5 per cent interest. There are nearly 1200 stockholders in the company; the company has grown from the time when two men ran it to its present size; the company has grown very largely in the last few years; with the exception of these bonds I spoke of, we have increased our capital by issuing our stock to our stockholders, and most of the stock is usually subscribed. As we develop and acquire new property and get the money in that way, what small percentage of it isn't subscribed, after the subscription lists are closed, we sell at the market price, whatever it may be. It is offered to our stockholders they buy it at par.

Cross-examination.

(By Mr. ELDER.)

We had a good deal of trouble to sell those last bonds,—in fact, they are the only bonds we have sold in a great many years; roughly speaking, I don't remember the exact amount, but the company owned by the company is worth \$20,000,000, at this time. I mean by that, that is the book value of it. The electric light and power plant of the business as separate from the street railway business is about 75 per cent. About a quarter of our capital is invested in electric railways, and about three-quarters in light and power business. That is also approximate. It may be a few per cent one way or the other out, but that isn't very far off. [369—85]

Mr. H. L. Bleecker is second vice-president of the company. I think he held that office in 1911.

**[Testimony of George B. Colpas, for Plaintiff
(Recalled).]**

GEO. B. COLPAS was recalled and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

I can give from the records of the company the total amount of money that was expended on the Post Falls plant up to the first day of January of each year as far back as 1907. The dams from part of the building and that part I am unable to separate; the amount expended on the dams to January 1st, 1907, was \$329,288.69; on the buildings to that date \$87,754.20; on machinery \$254,425.50; to January 1st, 1908, on dams \$335,152.63; on buildings, \$91,724.93; on machinery, \$310,494.32; to the 1st of January, 1909, on dams, \$335,281.96; on buildings, \$91,892.27; on machinery, \$402,739.93; to January 1st, 1910, on dams, \$335,281.96; buildings, \$117,492.57; machinery, \$404,982.22; to the 1st of January, 1911, on dams, \$339,781.96; buildings, \$143,525.41; machinery, \$421,898.91; they all represent charges to the capital account, no maintenance. The actual original cost of the railroad spur and bridge as shown by the books to January 1st, 1907, is \$19,795.39; that has continued through to the same amount during each of these years; nothing else has been charged to the capital account. For that interest on construction which I gave to-day, \$34,570.79 is carried through as one item to January 1st, 1911, and the land and water rights, \$109,272.44, to January 1st, 1911. I

(Testimony of George B. Colpas.)

cannot tell from the books what the Shoshone County property is carried at. The only explanation I can give why I cannot [370—86] tell from the books what that property is carried at would be that it was never asked for in the first place, it was never expected to be asked for; the line was built in connection with other lines running outside of the county, and they were all built together, and it was never expected they would be separated. I could not give the original cost of transmission lines in Idaho. The Coeur d'Alene lines 1 and 2 were built, part of them in Washington and part in Idaho. I cannot tell how much in each State; I do not know that it would be possible to give you the whole cost of the transmission lines into the Coeur d'Alene country, or from Post Falls to Spokane.

[Testimony of C. L. Corey, for Plaintiff.]

C. L. COREY was called and sworn on behalf of the plaintiff and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

My name is C. L. Corey. I reside at Berkeley, California. My occupation or profession is that of professor in the State University of California, and a consulting engineer, with the offices in San Francisco. I was educated for the profession at the State Institution of Indiana, from which I graduated in 1889, and completed a graduate course in engineering at Cornell University, New York, in 1891. Since that I was instructor in electrical engineering in

(Testimony of C. L. Corey.)

Highland Park College, Des Moines, in the year 1891-92. Since October, 1892, I have been connected with the University of California at Berkeley, teaching principally electrical engineering. Since 1895 I have been in the practice of outside engineering work, [371-87] and pertaining to the valuation of public utilities, especially since 1905, for the cities of San Francisco, Los Angeles, Sacramento, Modesto, Santa Barbara, Alameda, and Stockton, and for public utility corporations for the Los Angeles Gas & Electric Co., for the Great Western Power Co., and for the Washington Water Power Company, and there may be others; those are the principal ones. During that time, I have investigated electric light and power companies, electric street railway companies, and interurban electric railways, telephone companies, gas companies, and there may be others of some smaller kind; those are the general utilities. In my study and investigation for the purpose of ascertaining the cost of plants, constructed and owned by public utility companies, I have had occasion to investigate into the engineering records of the Wisconsin Public Utility and Tax Commission, of the New York commissions, of which there are two, one for the first district, meaning New York and what used to be Brooklyn; the other district for all of New York out of those counties; of the Massachusetts Highway Commission; and of the California Railroad Commission; the State of Washington Commission, and, in certain relations, the Interstate Commerce Commission systems of account-

(Testimony of C. L. Corey.)

ing, or engineering records of cost, and the accounting system which is recommended by the National Electric Light Association; the National Street Railway Association, and of particular corporations, perhaps primarily the American Telephone & Telegraph Co.

I have had, in the practice of my profession, occasion to investigate these various systems in actual use, and the various systems of accounting and retaining engineering costs. [372—88]

I have made an investigation of the system of accounting of the Washington Water Power Company, used in connection with the construction of the Post Falls plant, and the records and system of accounting and the books to ascertain what the system adopted and used was. The examination was begun on the 5th day of July last, that examination continuing at that time until the 19th of July. Subsequent to that for perhaps 10 days in the latter part of July, and August of that year, and again at a subsequent time in the latter part of November and the early part of December of last year, and again in the latter part of December last year and the early part of January of this year; that was not in connection with this litigation at all.

Referring to the cost of construction of the Post Falls plant, I found the sequence of records, after the authorization for the expenditure has been given from the president or the board of directors, or any others, that the work of any particular item, such as the ordering of electrical machinery, if you please,

(Testimony of C. L. Corey.)

was given what was known as a work order. That work order contained, as I found then upon my examination, principally in the engineering offices, rather than in the accounting departments, carbon copies of the actual money expended upon the different parts of the plant. These work orders are numbered, and naturally there would be a large number of sheets of paper of this character, referring to different kinds of work. Upon the work order, if a contract had been let for machinery, you would find a reference, so that you could go to the engineering files and get the actual contract. Connected with that contract, or referred to by this contract, [373—89] were all costs in connection with that machinery, such as freight, haulage, transportation. Following that to—I am sure I don't know of my own knowledge what the technical name of the book would be, but a ledger, or preliminary ledger, in which all of these items were properly collected under their heads, a great number of different items; then all the costs that had gone into the construction of the plant, labor and material, and contracts for such portion as there were contracts, and any additional charges were entered in this book, and finally, in order to check up and make sure that all of these had been entered, I found the general ledger in the auditor of the company showing all of the items; and the aggregate, and, in some cases, segregated into the items going to make up the entire plant.

The system is not an unusual one. It is a modern and very efficient one. It is true that the system,

(Testimony of C. L. Corey.)

as has been designated the work order system, sometimes bears other names than work order. I found in most systems of accounting they will have a designation such as is commonly called G. M. O., which means general manager's order; that is, particularly, in transportation systems, coming from the common practice of the steam railways. For some of the power companies they are called O. F. E., an order for expenditure; but under any condition the final file will set forth what is set forth in what are work orders, and what I found were called work orders; termed work orders, by the Washington Water Power Company, in the system there used.

I have had experience with hydro-electric plants and water plants as follows: Investigation of the Northern California Power Company; the Great Western Power Company, [374—90] The Yosemite Valley Electric plant, which was installed under my direction by the State; the Oro Water, Light & Power Co., the Arizona Power Company, in Arizona; in Vancouver, the Vancouver Power Company; in Utah, the installation of certain parts of the Telluride Power Company. I have had different duties with those companies; for the Northern California Power Company, I was consulting engineer during its construction; similarly for the Oro Water, Light & Power Company; for the Cloverdale Light & Power Company; for the Truckee River General Electric Company, in California and Nevada; for the Arizona Power Company; in an

(Testimony of C. L. Corey.)

advisory capacity only on the work of the Telluride Power Company; but in general the work which I had to do was in connection with the development or extension or the investigation of the physical conditions of some of the operating plants that had been put in operation. I have myself appraised various hydro-electric plants in operation. In addition to the practical experience I have had during the years I have given, I have spent time in reading literature upon the subjects connected with my profession, and the particular lines which I have followed. I have read and investigated the reports of the various railroad commissions and public service commissions. I have made an investigation and study of the question of depreciation as applied to hydro-electric plants and to other public utility plants. In connection with depreciation the work which I have had has been extensive, primarily because of the elements going into the value, as well as the annual operating cost of public utilities, usually for the city or some other rate-fixing body, in connection with a report to them. [375—91]

I have given study to the subject of maintenance in the same way; depreciation is a reduction in the value of a thing due to wear and tear, which cannot be overcome by repair or maintenance, by the fact that the thing becomes inadequate for any reason for the purpose for which it is used, or becomes obsolete or out of date. Maintenance is represented by the cost of keeping a thing in operating condition, so that its working condition will be as nearly as pos-

(Testimony of C. L. Corey.)

sible 100 per cent of its original working condition. The item of depreciation in connection with the plant under consideration here is based on what has been defined as the straight line depreciation, which is based primarily upon the estimate of the useful life of the plant as a whole, that useful life being determined by the life of the various elements which will go to make up that plant. I used the straight line depreciation because by using that system of depreciation, the depreciation is averaged over the entire life of the element, and by what is known as the curved line of depreciation, it leaves the maintaining of the invested capital intact, all to the last years of life of the system, which is not the right thing to do when there is any possibility that in the latter years of the life of the utility its earning power may not be as great as in the beginning.

It is a very difficult matter to always determine whether an expenditure upon a part of a plant should be charged to maintenance or depreciation. There are certain specific regulations set forth by the Interstate Commerce Commission, and by the public utility commissions. I may say this: All money that is expended for repair, upkeep, or to maintain the device in good operating condition, must be charged to [376—92] maintenance and must not be charged to depreciation. Anything which cannot possibly be prevented, no matter how much you repair the article and still lead to the abandonment of the element must go to depreciation. It would be absolutely wrong to attempt to determine the net earnings of

(Testimony of C. L. Corey.)

any company, public utility, or otherwise, if we were to confine the expenditures as far as maintenance, to a single year.

I am familiar with the Post Falls plant of the Washington Power Company. I have fully examined and investigated it; I have in the examination of these accounts and records gone into the question of the cost of it, and of the various items in it, in a general way; that was during these various trips; that was during July and August last year. I am familiar with the character of the transmission lines which run out from that plant. I have made an investigation of the subject of the amount of moneys per mile properly chargeable as maintenance to such transmission lines. It being understood that that estimate is based upon the average covering the entire life of the wooden pole line construction. The estimated life of such transmission and distribution lines is about 12 to 15 years. That is the whole structure as a pole line, including poles, cross-arms, insulators, braces, pins, insulators and conductors, and the telephone equipment that is placed thereon. I mean everything that goes to make up a transmission line, where wooden poles are used. Based upon my knowledge, of such transmission lines over the same character of country, subject to the same set of conditions, I should estimate the average maintenance charge to be about \$100.00 per mile for a year. I should take the depreciation on such transmission lines at about 8 per cent, which would correspond [377—93] to an estimated life of between 12 and 13 years.

(Testimony of C. L. Corey.)

From my knowledge of such dams as those of the Washington Water Power Company, used in the same way as those dams are used, I should estimate, and believe, 2 per cent to be the reasonable depreciation to be charged off and allowed the proper element of life being taken into consideration, and corresponding to an ultimate life of 50 years. From my knowledge of these dams and my knowledge of the maintenance on dams of a similar character over a long period, I should estimate the maintenance to be somewhere between 1 and 2 per cent, possibly 1 per cent would cover the general item; in other words, I should think the sum of \$3,000 would approximately cover that; for these dams and the devices connected with the dams forming part of them, I would allow 3 per cent for depreciation for the buildings. I should estimate the maintenance charges on buildings such as the Post Falls main power generating station, and also the building that goes with it, for the high tension equipment, at some 4 or 5 per cent per year.

For the maintenance of the machinery, answering the question as the average maintenance throughout the entire life of the machinery, consisting of the water turbines and the electrical generators, and the transformers, and the high tension apparatus, I should estimate that at something about 2 per cent, over the entire life of the composite equipment. I should consider a depreciation, estimated entirely upon the ultimate life, of an average of 5 per cent, on the group I mentioned,

(Testimony of C. L. Corey.)

not so much perhaps for the turbines as for the electrical machinery;—between 4 and 5 per cent, depending upon the different parts of the machinery; for the [378—94] high tension apparatus decidedly more, six and two-thirds, or corresponding to a sixteen year life for such equipment, and averaging about 5 per cent. In my judgment, a return of 10 per cent would be proper, as the rate of fair return upon such a plant as the Post Falls plant, taking into consideration the fact that in large measure the demands for power are from a mining country, and taking into consideration that there are possibilities of competition in that mining country, and that there is no other demand in that mining country except as a result of the production of the metals. I am basing that solely upon decisions of the court and the State Commissions for exactly similar service. The business of furnishing mines, from my own experience in hydro-electric development, is not as stable a business as the supplying of a growing city or a large city with electric lights and power. The valuation of the plant at Post Falls, which is the source of the electrical energy, will depend upon a number of factors. One of the evidences of its value, but not at all the only one, will be the first cost of construction.

The value of the plant will be determined by the amount of energy which it will produce, its output. It will depend upon the supply of demand, or will depend upon the market for this power. It will depend on the cost of delivering this power to

(Testimony of C. L. Corey.)

that market. It will depend upon the cost of substitute power from any reasonable source. It will depend upon the permanency of that market. It will depend upon the character of contracts, whether for a short period or a long period, which it possesses. It will depend upon its value as a going concern, as contrasted merely with a physical plant, ready to supply, but having no market, complete, but not in [379—95] operation, as contrasted with it and its distribution system, giving service, and adequate and satisfactory service throughout the entire period of demand during the year when such service is required. Those are in general the elements that must be considered in determining the value of such a plant. Given the gross revenues received from the power generated at Post Falls, knowing that in addition to the dams, machinery and buildings there is a distribution system, I should appraise the values of those dams, buildings and machinery based upon the net revenues, by attempting to get at the net revenues over as long a period of time as possible, both in the past, and estimated for the future and capitalize that net revenue, after all expenses of operation has been paid, upon a fair return, and consider all the costs outside of the dams and power plant and so on, and deduct those costs from such a capitalized value, and that would be one measure and one evidence of the value of the property.

(Witness temporarily withdrawn.)

**[Testimony of George B. Colpas, for Plaintiff
(Recalled—Cross-examination).]**

GEO. B. COLPAS was recalled and testified as follows, on

Cross-examination.

(By Mr. ELDER.)

I have the total cost of the railroad spur and bridge—\$19,795.39. I have all the details here for \$19,305.00. There is \$375 of details that I haven't got, and if that will be satisfactory, the largest item is the contract of \$18,034. There is the details of it (handing papers to Mr. Elder). There was no charge for steel rails used on this. I think the Northern Pacific railroad furnished those and took them back again. I believe the spur was taken up this year, and they took the rails back. I do not [380—96] know the length of the spur; I can't say as to whether the company paid the Northern Pacific any sum for the use of those rails; almost the whole cost of the bridge and spur was done by contract with Bennett & Beeler, that is, almost all of the costs, and there is no rails shown here. By "Force account" is meant for items, expenses laid out which they cannot explain. The force account in this case was small, five hundred dollars. I do not know the value of the rails that were used on this spur; they were not billed to us at any value.

**[Testimony of D. L. Huntington, for Plaintiff
(Recalled).]**

D. L. HUNTINGTON was recalled and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

The period of the longest contracts we have for the sale of power generated at Post Falls, in the mines is 5 years. None of the contracts exceed that. There are some of them in which the customer has the option of renewal; we haven't; it is with him, and not with us.

[Testimony of F. R. Insinger, for Plaintiff.]

F. R. INSINGER, sworn as a witness on the part of plaintiff, testified as follows, on

Direct Examination.

(By Mr. POST.)

My name is F. R. Insinger. I live at Spokane; have lived there for 15 years. I am manager of the Pacific Hypotheek Bank; that is strictly a mortgage company. We have a second mortgage company called the Tweed Northwestern, connected as delegate for the trustees with the Holland Bank, another [381—97] mortgage company, having an office in Spokane. I was at one time manager of that, and also connected with the Spokane & Eastern Trust Company, as trustee, doing a mortgage business. I am president of the Chamber of Commerce of Spokane.

The Northwestern Pacific Hypotheek Bank does business in Idaho, Eastern Washington and Eastern

(Testimony of F. R. Insinger.)

Oregon. It has been doing a mortgage business in that section since 1885. The Holland Bank has been doing business since 1897 under its present name; it is a reorganized company. The Northwestern Pacific Hypotheek Bank has now loaned on first mortgages in Idaho, Eastern Washington and Eastern Oregon, a little over six million dollars; about between a million and a million and a half of which is loaned in Idaho; the money is loaned in the State of Idaho at 8 per cent, and the same rate in Eastern Washington and Eastern Oregon. We aim to loan upon the property mortgaged at not to exceed 40 per cent of its valuation. We loan in most of the counties in Idaho; a considerable sum in Twin Falls County; not as much in Ada County, we are beginning there. The Holland Bank has loaned altogether in Washington, Idaho and Oregon, about \$1,700,000; about one-half of that in Idaho at a rate of from 8 to 8½ per cent. The maximum per cent of the value of the property which we aim to loan at is 40 per cent. The bulk are comparatively recent loans. Our companies are in competition with other mortgage companies in the same section of the country. That is the rate charged by all mortgage companies. Our biggest loan at the present time is \$55,000; that is in Spokane on some city property; the rate of interest on that is 7 per cent; that is an old loan at 7 per cent. I think \$25,000 is the biggest loan in Idaho; that is a farm loan at a rate of 8 per cent. [382—98]

(Testimony of F. R. Insinger.)

Cross-examination.

(By Mr. ELDER.)

The loans average a few thousand dollars—from two thousand to five thousand dollars. I know the rate of interest paid on large loans in this community; I know of some say from five million to twelve million dollars. It is pretty hard to say what the rate on those is. Most of these bond issues vary. They go from five to eight per cent, and some with commission and some without commission or discount. It is pretty hard unless you state the more particular line of business; it is almost impossible to state what it is; very few of the large loans are made at 5 per cent; I do not know of any in Idaho. I did know about a loan of the Washington Water Power Company; I know the rate of interest charged on some large loans such as first mortgages on water-power sites in Idaho. I do not know of any particular case just now of loans over a million dollars on such property.

Redirect Examination.

(By Mr. POST.)

I have recently had some experience with a proposed large loan in Idaho from a corporation. I was trying to negotiate a loan for the Twin Falls Canal Company; they are the owners of the water rights and distributing system and dam of the Twin Falls Irrigation Project. The canal system has cost about three and a half million. It is valued roughly at \$5,000,000. This proposed loan was to be \$300,000, about 6 per cent of its value. The going

(Testimony of F. R. Insinger.)

rate of interest for a large loan upon a water project or [383—99] irrigation project would be different if the amount loaned was, say, 25 per cent of the value of its property, than it would be if the amount loaned was 90 or 95 per cent of the value of its property. The rate of interest, if you could borrow the money at 90 per cent, would be higher than if it was 25 per cent. The Spokane & Eastern Trust Company does a trust business, handles bonds on industrials. It is possible that loans could be placed on an industrial such as a water-power proposition at 90 per cent of the value; they have done it; it is possible with companies like the Hypotheek Bank; the Trowbridge & Niver people in Chicago made considerable loans at supposedly large parts of the value of the project. They loaned on irrigation projects, dams, reservoirs and canals. I do not think bonds secured by mortgage up to 90 per cent of the value of industrials, water-power plants are generally considered as marketable securities, no matter what the rate of interest is.

[Testimony of Eugene Logan, for Plaintiff.]

EUGENE LOGAN was called and sworn on the part of plaintiff, and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

My name is Eugene Logan. I live at Spokane. I am a civil engineer. I am acquainted with the pole lines of the Washington Water Power Company in Shoshone County; I have surveyed them to

(Testimony of Eugene Logan.)

ascertain the length of the various lines; I know what lines the company had constructed in that county in 1908, and during the years 1909 and 1910; those pole lines were given particular names; I have my original notes on my [384—100] own surveys of the lines; there was Coeur d'Alene No. 1 and its branches; Coeur d'Alene No. 2, 60,000 volt lines, both of them. I can tell you how many miles of the No. 1 and its branches were constructed during 1908 from my surveys and from my familiarity with them. Coeur d'Alene No. 1 and its branches that were in operation during that time, this was on January 1st, 1909, 41.07. Coeur d'Alene No. 2, 21.55; a total of 62.69 miles. On January 1st, 1910, Coeur d'Alene No. 1 and branches, 41.07 miles; Coeur d'Alene No. 2, 21.55; secondary pole lines 15.44 miles. On the 1st of January, 1911, Coeur d'Alene No. 1 and branches, 41.07; Coeur d'Alene No. 2, 21.55; secondary pole lines, 20.75 miles.

Cross-examination.

(By Mr. WERNETTE.)

I did the surveying myself. I had a party assisting me; I was there every day with the party; I kept the notes to a certain extent and I know they are correct; all notes were kept under my direction. I checked up those notes and know they are absolutely correct, I have them here; those are the original notes I have of the Shoshone County pole lines here, and the figures I gave were the number of miles of pole line in Shoshone County of the company at the time testified to. There were none in

(Testimony of Eugene Logan.)

use besides the ones I have testified to; those are all the pole lines of the company and those included those in use and those not in use. In considering the number of miles I consider to the building where the line goes into the building, where the customer uses it. The word "pole line" means the length of the line, and that is to each individual customer; there is no instance where it merely goes to where the transformer is situated. [385—101] The primary line is 60,000 volt line and the secondary line is a 2,300 or a 6,900 volt line.

**[Testimony of John B. Fisksen, for Plaintiff
(Recalled).]**

JOHN B. FISKSEN was recalled and testified as follows, on

Direct Examination.

(By Mr. GRAY.)

I acted in a consulting capacity on the erection of our first 60,000 volt lines to the Coeur d'Alenes, on the branch from that line to Post Falls, and on the construction of the line to Medical Lake. Since then I have been, up to about two years ago, I have acted as designing engineer, locating engineer, superintendent of construction, of all of our 60,000 volt line, including the line to the Palouse country. The Big Bend country, the second line to the Coeur d'Alenes, and a number of smaller ones.

I am familiar with those things, which go into the construction of a transmission line and their cost, and was in the years 1908, 1909 and 1910. I am familiar with line No. 1 of this company in Shoshone

(Testimony of John B. Fisk.)

County; the reasonable cost of constructing a line such as Coeur d'Alene No. 1 is about \$2,000 per mile; the No. 2 line could probably be built for \$3,200 per mile. Secondary lines about \$1500 per mile. I am familiar with the substation during these various years referred to; the cost would be approximately the same. I am familiar with the substations of the company in Shoshone County; in 1908 we had 12; 1909, 12; 1910, 13. I am familiar with all of these substations and the contents, and what machinery is in them. The experience I have had in designing and constructing such substations, I was consulting engineer in reference to the first 8 of those substations which were built. I have had [386—102] immediate charge of the construction of all the substations, both in Shoshone County and in the State of Washington, constructed since that time. The average cost of those substations would be about \$15,000 apiece. In 1908 there were 10 equipped and 2 vacant; in 1909, 10 equipped and 2 vacant; in 1910, 10 equipped and 3 vacant. The reasonable cost of those that were vacant would be about \$2,500 each. Line No. 1 and its branches were built through 1902 and 1903; the Shoshone County part was built last, part of it was built in 1908 and part in 1909, 8 substations were built in 1903, 1 in 1904, 1 in 1905 and 2 in 1907. The 2 that were dismantled that I have spoken of were 2 of the 8 original built in 1903. I have checked from the transfer ledger of our records to find the maintenance of dams and flumes for the year 1911; the total for

(Testimony of John B. Fisk.)

maintenance for dams and flumes for that year was \$3,872.46. It does not agree with the amount I testified to the other day; there is a discrepancy; two items that I haven't so far been able to locate, the amount is \$31.18, less the figures which I gave before. I can probably find these figures.

Cross-examination.

(By Mr. WERNETTE.)

The measurements that were made as to the number of kilowatt hours, sent to Shoshone county, was at the different points in Shoshone county; they were measured at the place where we delivered the current to the consumer. That is true in each case; that is what we charge the consumer for. In some cases the consumer stood the line loss and in other cases we stood it; by that I mean the line loss from the substation; in some cases the power was measured at the substations and the consumer built his own line from there to where he used [387—103] the power; in other cases we built the line from the substation to the consumer's premises, and metered the current there. The current that was sent to Spokane was measured in the first instance at Post Falls; it was not again measured in Spokane. We had a meter down there to measure it when it was taken at Spokane. The meters weren't connected up to measure the incoming current correctly. They were there to meter the outgoing current. The current that was delivered in Kootenai County was metered at Post Falls. In the case of Strathern and Martin, it was measured about a half a mile

(Testimony of John B. Fisk.)

from where it was delivered to the consumer; that was the same with the Kootenai Power Company, about a half a mile out. With the Spokane Railway it was metered at the station. In connection with my work with the pole-lines, as soon as I got a survey, I had to lay out the work, generally arrange the camps, engage foremen, and after I got them in the field I had to visit the works and see that it was done properly. I had to see that material was delivered on the job that they required; I had to take the regular reports of the work sent in and see that the work was posted properly; I had to see that the items of cost were properly entered, and that the work didn't cost more than it should. Before that I had to make an estimate of what the work was expected to cost, and finally had to check up the total cost.

I estimate the cost of those pole lines in Shoshone, Coeur d'Alene No. 1 and branches, at about \$2,000 a mile; there are 42 poles to the mile; the standard size of the poles is 32 feet; there are some larger poles in that line, not very many; they are cedar poles; it cost about five or six [388—104] dollars a pole to put them in the ground; it cost about five dollars a pole to put them up. I sized the ground up generally, and that is an average price from my knowledge of the country; that includes the rock excavated for the pole. The No. 1 line was originally equipped with 3 piece insulators, but they were the first 60,000 volt insulators manufactured; the insulator alone is worth about \$2.25 in place; there is one cross-arm to

(Testimony of John B. Fisk.)

a pole, very few braces; the cross-arms are six by six in the rough and 48 inches long. They are put on surfaced. They are sized down to about $5\frac{3}{4}$ by $5\frac{3}{4}$; we buy them finished. Where braces are used there would be an additional cost of 25 cents; the size of the wire used in line No. 1 is No. 2 Brown-Sharps; it is copper. I do not know what they cost; the approximate cost of that wire is 20 cents a pound; that is an average price; it would cost about \$45 a mile to put it in place. I have not all these amounts in my record; at the time that pole line was built our costs were not segregated; the company knows to a cent what it cost to build the whole line, but we keep separate account of the cost in Spokane and Kootenai and Shoshone County. It cost about \$2,200 a mile to build the whole line. These figures were not kept in accordance with our modern method of bookkeeping. This line was built 10 or 12 years ago. It would take quite a while to get the actual cost. I would say that line No. 2 was worth approximately \$3,200 a mile. I account for the difference in cost of the two lines, because we built the line No. 1 in 1903, and it was about the first 60,000 volt line in existence commercially. We did not know what was required to make an economical line, that is to say, both as regards its maintenance and other items. Between 1903 and 1907, when we began to plan for a second line, we had had 4 years of practical experience [389—105] and we found it was necessary to spend a great deal more money to build a line that would stand up almost continuously. Our records show

(Testimony of John B. Fisk.)

that our second line stood up almost continuously, but our No. 1 line did not; we had a good deal of trouble with it. The additional expense comes in by having a higher class of insulator, stronger poles, more expense in clearing right of way, and selecting a route more clear from trees. The right of way was not considered in my estimate; the clearing of the right of way is considered, not the purchase. On the No. 1 line it cost about \$100 a mile; on that line it was 100 feet wide. The brush and stumps were not cleaned out.

A path or line of 100 feet was cleared on the No. 2 line; it cost a great deal more to clear the No. 1, because the line was located in a different place. It was located through a more timbered country. That was done to get it higher up in the hills. The clearing of the No. 2 line cost about \$250 a mile. There are about 28 poles to the mile on line No. 2; the standard length of the poles there was 50 feet, but a great many longer poles are used. Much more attention was paid to grading the line than had been done in the case of line No. 1; that is to say, the sharp dips and peaks in the line were eliminated. The insulators alone cost about the same; they were a much better insulator but the cost has been reduced; they were 4-piece insulators. The No. 2 line was built with a triangle twice the size of No. 1.

The wire on the line in Shoshone County was copper; there was a telephone line on this pole-line; they were constructed at the time the line was and included in my estimate. The [390—106] tele-

(Testimony of John B. Fisk.)

phone line cost about \$250 a mile on the No. 2 line. In regard to the No. 1 line we kept a complete record of the cost but I am not in a position to give you the cost of the line in Shoshone County. \$1500 a mile would be a reasonable cost for the secondary pole-line. I based my estimate on my personal knowledge of the cost. I had charge of all that work; I do not know exactly what the cost of the copper was in the Coeur d'Alene No. 2 branch or line, but about 20¢. The cost of the copper has always fluctuated, I haven't looked at the market for quite a while.

In giving my estimate of the cost I tried to be guided by my recollection of what the wire cost at that time. Such data can be furnished. I do not remember what the price of copper in the year 1911 was compared with the time that No. 2 branch was constructed. I do not remember what it was the year before. It has averaged around 20 cents for a number of years; that is the price delivered; the price of the poles at the time they were put in in this No. 2 branch averaged about \$15 a pole. Some of the poles were delivered across here at Squaw Bay and we had to drive them across, that is an estimate, and to the best of my knowledge and recollection they cost about the same the year before. In the last 6 months there has been a slight reduction in poles; they have varied up and down slightly, but do not to any great extent. It depends largely as to how many poles are on the market. Those poles on the No. 2 line cost about \$12 apiece in place. The labor cost about \$80 a mile for putting up the insulators and stringing the

(Testimony of John B. Fisk.)

wire. I account for the difference in price between the secondary pole-line and the larger one, because the secondary insulators are very much cheaper. There is not [391—107] very much difference in the cross-arms; the clearing for the secondary lines is not as heavy; we don't clear very much for that. The difference in the cost of the insulators on the secondary lines and on Coeur d'Alene No. 2 branch is \$2.50. The difference between the price of the insulators on No. 2 line and secondary pole-line is about \$220 per mile.

In 1908 we had 12 substations in Shoshone County; that is not a substation at Cataldo; that is a switching station. We had 10 of those substations equipped in 1908; they were not all the same size; they varied that year, a different style of construction; they averaged about the same cost, they were equipped differently. I have been giving the average cost of all of them. I have not records showing what the cost of each individual substation was; the original cost of the substations and lines were put together. We can give you the total cost of the No. 1 line, with the substations, but we can't segregate it without a great deal of labor. It can probably be done very correctly, but it will take a great deal of labor to do it. The later substations we have the cost of; I have not noted anything for real estate, for the reason that I do not remember any case where the real estate has cost us anything, and no real estate is figured in my estimate. I have not the plans here of the substations equipped in 1908. They were about

(Testimony of John B. Fisk.)

18 by 22 and about 35 feet high, made of brick mortar, with steel beams, wooden doors and ordinary wooden window frames and sash, corrugated iron roof. That is not true of all of them; some of the substations are of larger dimensions, and 5 of our substations are steel frames covered with corrugated iron. In some of them there are lightning arresters, not in all of them; in each case there is a high tension oil [392—108] switch. There are step-down transformers in some cases two, and in other cases one; there are switchboard panels, and an immense amount of small stuff, wire, etc.

I can give you how many step down transformers there are; in the 10 that were equipped in 1908, there would be about 30 switchboards. The average cost of those transformers in the 10 substations equipped in 1908 was about \$7 per K. W. The step down was from 60,000 to 2,300. I do not know exactly how many lightning arresters there were in those 10 equipped substations in 1908, nor how many transformers were in the substations in 1910, nor exactly how many switchboards, nor how many lightning-arresters. The amounts I gave are not a rough guess; it is a very close figure. Because I have had occasion to know these costs and I am thoroughly familiar with these costs. I have had occasion to not only make the estimates, but to find out after the work is done what they have cost. The average cost of the buildings of one of those substations was about \$2,500. The buildings together with the apparatus and machinery, \$15,000.

(Testimony of John B. Fisk.)

The total output of the Post Falls plant for 1910 was 57,127,000 K. W. measured at the switchboard at the Post Falls plant. I put these notes down from my own knowledge. I didn't have a record with me when I did it.

Direct Examination.

(By Mr. GRAY.)

For the No. 1 line the cost per mile was per mile, poles, \$250; cross-arms and lag screws, \$21; pins and insulators, \$250; telephone-arms and lags, \$10; telephone insulators and pins, \$8; wires, \$600; telephone wire, \$112; labor on poles, \$252; stringing the high tension wire, \$45; stringing the telephone wire, \$20; hauling, \$100; clearing, \$150; [393—109] camp expenses, \$20; making roads, \$100; foreman, time-keeper, \$15; superintendence and sundries, 10%, \$195; making a total of \$2,148. My estimate was a little lower.

Taking the No. 2 line, poles, \$260; cross-arms and lags, \$26; pins and insulators, \$215; telephone-arms and lags, \$8; telephone insulators and pins, \$5; wire, \$1,000; telephone wire, \$112; labor and poles, \$390; stringing high tension wire, \$60; stringing telephone wire, \$20; hauling, \$300; clearing, \$350; camp expense, \$20; making roads, \$150; foreman, timekeeper, \$15; superintendent and sundries, 10%, \$293, making a total of \$3,224.

The clearing and hauling came to so much because the No. 2 line took a different route; we wanted to get out of the river bottom to a large extent, and put it up into the hills, where there was much more clear-

(Testimony of John B. Fiskén.)

ing, and that accounts for the heavier cost of hauling. There is a railroad along that line; it runs back from the railroad quite a little ways, between Kellogg and Osborn.

The cost of secondary lines per mile, poles \$250; cross-arms and lags, \$25; wire, \$600; labor and poles, \$250; stringing wire, \$45; hauling, \$75; clearing, \$50; camp expenses, \$50; foreman, timekeeper, \$15; superintendent and sundries, \$136; making a total of \$1,496. The right of way cost some money; I do not know how much; I haven't included that.

Recross-examination.

(By Mr. WERNETTE.)

In regard to camp expenses, I would say that in some cases we run a construction camp, in which all the men all board, [394—110] and as a general rule we run behind. Of course the men are charged so much for their board, and, as a general rule, our camps are not quite large enough to cover the expenses. If you will notice, on the high tension lines the expenses are very high, and the reason for that is that in a great many of the lines we did not run a camp, but we boarded our men at the hotels. The deduction we made from their pay was the same as if we were running a camp, and we took care of the difference, which in some cases ran away up, so I figured the camp expense of the low tension lines very much higher than on the No. 1 and No. 2 lines. This last item of \$50 covers all the secondary lines in the county. I know that it was about that cost. The wire used on what we call the No. 2 line was not the

(Testimony of John B. Fisk.)

same size as on the No. 1 line. The wire used on No. 1 line was No. 2, and on the No. 2 line was No. 0. On the No. 1 line the wire is 1064 pounds to the mile. On the No. 2 line there are 3 wires to the mile, so the total would be three times that per mile; that wire weighs 1688 pounds to the mile, and that is to be multiplied by 3 also, making practically 5,000 pounds to the mile, and on the No. 1 line there would be practically 3,000 pounds to the mile and 3 wires on each line.

**[Testimony of Fred E. Wonnacott, for Plaintiff
(Recalled).]**

FRED E. WONNACOTT was recalled to the stand and testified:

Direct Examination.

(By Mr. GRAY.)

The assessed valuation of the pole-lines in Kootenai County, which I gave, \$183,000, for the year 1911, was correct. There were \$6,917.31 acres of easement lands; they were [395—111] assessed at \$25 per acre; the fee lands, not including the property at Post Falls, 375.19 acres. I didn't get the figures on that; there were a great many tracts; lands at Post Falls and immediate vicinity, \$565,944, that includes the power site and everything; here is the acreage of right of way of the pole-lines, 839,69, those are easements. I have the tax receipts for the assessed valuation of the fee lands. Of that 6,000 acres of easement lands, there are a great many different tracts situated in various places. There are 15 pieces of

(Testimony of Fred E. Wonnacott.)

fee lands; that is outside of the plant property up here.

(Witness temporarily excused.)

[Testimony of C. L. Cory, for Plaintiff (Recalled).]

C. L. CORY was recalled and testified on

Direct Examination.

(By Mr. GRAY.)

I have not computed the depreciation of the transmission lines during each of the years 1908, 1909 and 1910, being on the second Monday of January of each year. The depreciated value based on the testimony as to their value, which has been introduced here, on the lines in Kootenai County, on a valuation of \$2,000 per mile; on the lines in Shoshone County, the No. 1 line \$2,000 per mile, and the No. 2 line \$3,200 per mile; the secondary lines \$1,500 per mile. I have determined the depreciation upon the dams, buildings and machinery at Post Falls for each of the years 1908, 1909 and 1910 in dollars. I estimate the life of the line to be 12 years; in other words, I figure upon depreciation of practically 8 and one-third per cent per year covering the life of the line. Every item which would be expended upon a pole-line which would prolong its life, in other words, if, [396—112] out of a pole-line having 1,000 poles, during the first five years, we will say, 200 of those poles had actually been taken out and replaced, if your line, the previous year, by new poles, the expenditure of replacement should come from the depreciation fund. In a plant of this kind it would be customary to replace or

(Testimony of C. L. Cory.)

substitute from year to year a new device for an old one. One could not give the present cost of the plant by merely making a calculation of the percentage without knowing how much had been replaced. To make that clear, if, as we often find to be the case, high tension switches were installed, we will say, in 1908, the advance in the art may have been, and in fact in this case has been, such that a switch which was considered the best possible in 1908 is practically inoperative at the present time; if that first switch is now and has been replaced by a new switch, perhaps of the 1910 or 1911 model—I refer to the automobile as an instance—then that replacement cost should come from the depreciation fund and should not be charged to maintenance, because that has been an expenditure which prolongs the useful life of that element, the high tension switch. You can naturally see, if the Court please, that it is a complex matter to arrive at what is generally termed the costs, less depreciation, at any interval, because in actual practice there are two things going on all the time, one, actual additions to the capital, which must not be depreciated until the expenditure is made; on the other hand, if an expenditure is made to allay depreciation, then it should not be charged to maintenance, but should be charged to depreciation.

The term maintenance as used by me is expressed often by other engineers under the expression “current repairs”; except that I believe that current repairs would be but a [397—113] part of maintenance.

(Testimony of C. L. Cory.)

Supposing that one pole there had become injured in such a way that it ought to be taken down and another pole put in its place, the expense of putting in that new pole would be charged to maintenance, as definitely determined by the Commissions, and as is the common practice in valuation work, because it is a very small element of the entire structure. If there were a number of poles, a mile of poles, for instance, to be repaired and replaced, it would depend on why the line is rebuilt. If the line is rebuilt because of the necessity of changing the route, that would be charged to maintenance. That is not under any report of the operating company. If that line is replaced because of necessity of increasing the height of the poles on account of change of structure in a large number of blocks, then the cost should be charged to construction, depreciation and maintenance. On the other side, each case must be determined by itself. Suppose the average life of the pole is 12 years, and suppose those poles for a mile are 6 years old, and because it is very wet, damp ground, or for some other reason, they died before the others and you put in new poles, I would say that that would be extraordinary conditions locally in a small part of the whole and would be charged to maintenance. Depreciation is something which must be considered as covering the entire structure, whatever it may be, a pole-line, building, a piece of machinery. Maintenance is something which involves only a very small part of that, such as repairing the brushes of a generator or repairing an armature, which would un-

(Testimony of C. L. Cory.)

questionably be charged to maintenance. That would not be true if it is a question of obsolescence, the obsolescence [398—114] naturally would have to be considered upon the whole element. Suppose we have a generator and an entirely new type of brushes would come out better, and an element of cost of a few hundred dollars, the replacement of those old brushes by the new brushes I would say would be charged to maintenance, because, in the end, with the machine as a whole we have not probably increased the useful life of that machine materially. It might be such a fine point as to divide a part of the costs of that new brush between maintenance and depreciation. There is no question but it is a complex matter in all of these items to in each case carefully segregate between a maintenance operating cost and a depreciation operating cost. At the present time a great many of these wooden poles are taken out in different parts of the country and better poles substituted, the wooden poles found inadequate. These wooden poles are supplanted either by steel poles or what are known as steel towers, but what seems to be more important now, the substitute will be replaced by reinforced concrete poles that are unquestionably better than any of the others. Suppose a pole-line in good repair is deemed to be inadequate and is substituted by new poles, and they take them out and put in new ones, the expense for that would be charged to depreciation. In getting at the value of a plant which has been actually in operation for a number of years, based upon the cost

(Testimony of C. L. Cory.)

of reproduction you determine the value of that plant by deducting from the cost of reproduction the proper depreciation charge at the end of the year upon the average reproduction cost of that particular portion of the plant about the middle of the previous year, bearing in mind that when you consider the next year any [399—115] addition to the plant properly chargeable to capital, such as extension, shall not be charged to depreciation until the year when it is actually in use, so that it is a constant case of deducting depreciation for the previous year and adding additional investment to capital for the previous year until you finally arrive at the end of the period at which you desire to determine the depreciated cost, or what is definitely designated as the plant balance at that date.

I have examined this plant at Post Falls. If I am given the original cost of that plant at the time when it was constructed, and its net earnings during the last three years, I can tell approximately its value, knowing the character of the market which yields the net earnings. I have the figures as to what the output has been in 1908, 1909 and 1910. I have the average net earnings for 1908, 1909 and 1910. I have also the valuation of the flowage rights, \$180,000. The transmission line in Kootenai County, \$183,000 and the

I have heard Mr. Fisksen's testimony as to the mileage, when it was built, and the reasonable cost of construction, and from the testimony here given and the original cost of that plant at the time when

(Testimony of C. L. Cory.)

it was constructed and its net earnings during the last 3 years, I can approximately state its value. At the start in answering that question, I want to absolutely distinguish the matter of cost and value. Considering the depreciated cost of the plant on January 1st, 1911, exclusive of any real estate, at approximately \$817,000, considering that the net revenue of the plant for the three years, 1908, 1909 and 1910 averages \$164,000, considering that 80 per cent of this revenue is derived from the sale of power to mines, and considering that the ruling rate of [400—116] interest on mortgages in this section of the country is from 8 to 8½ per cent. I should state that the value of the plant as a going concern, with contracts, actually giving service, having been tried out for a period of perhaps 4 or 5 years as to its cost of maintenance, and taking into consideration as well its first cost, that the value of the plant—generally defined, and upon this basis, that it is a value at which an owner willing to sell actually does sell to a buyer willing to buy, at \$988,573.85.

In arriving at this value, which I have defined, upon the basis of the capitalized earnings, I have taken the average net receipts for the years 1908, 1909 and 1910, which amount to \$164,116.61. That, capitalized at a rate of interest which is interest, and in addition to interest rates, a profit to cover the conduct of the business and the hazard in the operation of the business, not only as regards the return each year, but the danger of the destruction of the capital invested, at 10 per cent, deducting from that

(Testimony of C. L. Cory.)

the property in Shoshone County, the overflow lands in Kootenai County, the pole lines in Kootenai County, that would indicate a value of the Post Falls plant at \$916,710.14. That is based upon the earnings, however, for a three year period, is based upon the estimated cost of operation in part from a time since the plant has been in operation, and the estimated life of the elements. On the other hand, as an indication of this value, I would consider the physical condition of the plant at the present time, which I would like to call plant balance. The physical condition I would arrive at by figuring and considering the [401—117] investment in the three main items, dams, buildings and machinery, for each year since its construction, deducting each year the depreciation upon those elements, adding each year the new construction, which gives what is absolutely determined as the historic cost of the plant. Considering, then, the historic cost of the plant as of the date January 1st, 1911, excluding lands, of \$817,000—now, value and cost being entirely different terms, do not mean the same thing, and using the conclusions that I have, based primarily upon the historical cost to that date, also considering the physical value of the plant at that date, and considering as many years as are available, the net earnings, I should place the value of the plant.

The \$988,000 is determined from the cost of the plant, to which I have added, in order to convert cost of the plant into the operating plant as a going concern, 10 per cent, \$988,573.85. I added 10 per cent

(Testimony of C. L. Cory.)

to \$898,703.50, as an estimate between the physical plant and the plant actually in business, and as a going concern. There are many other items in that, but going concern in this case would be the principal item I should consider. That 10 per cent, of course, is an intangible matter. Approximately we add 10 per cent to Mr. Wiley's conclusion to cover these items of a going concern, with possibly this difference, that a certain interest during construction, should be depreciated at the average rate up to the present time. In this case there is a certain interest during construction set aside. We don't know upon what that will be charged. The average depreciation upon this plant is just a little more than 3.1 per cent per year. I have added that, which will be the [402—118] difference in the figures as given.

Cross-examination.

(By Mr. WERNETTE.)

I have been in the western country since I graduated from Cornell University, 2 months less than 20 years. I graduated from Cornell University in June, 1891. In August I went to Des Moines as Professor of electrical engineering in Highland Park College. I stayed there one year; I then came to the University of California on October 1st, 1892, and from that time I have been connected with the University of California. I am still connected with that institution in the capacity of electrical engineer, or professor in electrical engineering. I couldn't say that I spent the greater part of my time teaching in the University. I spent the greater part of my

(Testimony of C. L. Cory.)

time there during the academic year, which is about nine months; that covers from about the 15th of August until the 15th of December, and the 15th of January until the 15th of May. It is not necessary for me to be there almost continuously. During that time the hours actually given by me in the instruction at the University would be about 10 hours per week. That does not always cover a certain number of hours each day. It covers usually the work of instruction between 8 o'clock in the morning and 12 o'clock noon. I am seldom at the University in the afternoon, except for committee work or work outside of actual instruction. I have not opportunities to leave for any great length of time. I have not only opportunity but it is understood that I may leave the University at any time I desire, providing the work which I do is of an engineering character, along the line of my work at the [403—119] University. When I do leave I generally go in the capacity of a consulting engineer, or an advisory capacity. I did quite a little actual construction work for the corporations I have worked for covering a period of 12 years.

For the Northern California Power Company, in Shasta County, I was their consulting engineer during the construction of the plant, the capacity of which is about 30,000 horse-power, and at various times was on the ground to pass upon matters of construction of everything from the hydraulic development to the substations equipment. I drew all of the specifications for all of the construction of the

(Testimony of C. L. Cory.)

plant. For the Arizona Power Company, I was their consulting engineer in connection with the building of the plant to deliver power to Jerome, Arizona, the capacity of the plant about 60,000 kilowatts. I drew their specifications. I did not do all of this personally, but in my office, under my direction. For the city of Alameda, I have acted as their consulting engineer at different times since 1896, upon their municipal electric plant. For the Great Western Power Company, having a capacity of about 90,000 horse-power in water development, I have acted primarily for them in the investigation by them of the proper system of making rates, that, during the last year. The Yosemite plant, built in Yosemite Valley under my direction; the construction and all of the rest was let by contract, and I inspected all of the work that went in. Now, there might have been others, but I have not acted on what might be called public utility commissions, perhaps that would be covered by whatever happens to be the rate fixing body of the community. I acted for the supervisors in the City of San Francisco, during the years 1907, 1908 and 1909, and I acted for the city as consulting engineer in the annual [404—120] adjustment of rate for the telephone company. I should say the time amounted to in all three months, if it were all put together. That was scattered over some 3 years altogether. I did my work at the University during the entire period, continuously. I mentioned something in regard to the system of accounting and records kept by the Washington Water

(Testimony of C. L. Cory.)

Power Company. I first became familiar with the methods used by the plaintiff company in July of last year. I was asked by the company to undertake the direction of an inventory and an appraisal of the entire property of the company. I went over some of the books and some of the records, personally. I have been in charge in general, or directing the inventories or valuation or appraisement of the property since July 5th of last year; that work has not been completed. That work has been to include the Post Falls plant; but that is not completed. The inventory is, I should say, about 75 per cent of the work is completed. I have not done anything conclusive in the way of appraising the property as yet; I mean by that to say that in order to appraise the property the most important thing is to get at its present plant balance or present value. As an indication of that, the first cost, and if it is possible to determine that from the records which is known as the historical method of getting at the first cost, and that naturally requires an inventory, the first cost should not be taken by itself, and is not taken until it is checked with what would be a reasonable cost with the inventory and the unit costs. Now, after all that is done there are elements of value that must be taken into consideration in the appraisement over and above all of these other items which refer only to cost, so that that is what [405—121] I mean by coming to the closing up of the work. In other words, the value which I have placed upon the property, the full cash value, isn't conclusive at the present time. In con-

(Testimony of C. L. Cory.)

nection with the valuation work I have given since I have been in the vicinity in the past week a good deal of consideration to the value of the Post Falls plant. That is entirely independent of this work. I have given two figures, both of which I have given consideration, in arriving at a value of the plant, as defined by myself. There might possibly be others to be taken into consideration, when the work of appraising is completed, because I have not as yet taken the inventory of the Post Falls plant or any other part of the system, and attempted to finally give consideration to what would be called a replacement cost, as contrasted with the actual cost by their records. When I talk about the plant at Post Falls, I should include everything from the hydraulic development to the wires as they lead out of the high tension station at Post Falls, and that which is a necessary part in the operation or the production of the electrical energy from that plant. That necessarily includes the site. The plant at Post Falls as a plant would not include the reservoir, but the reservoir should be considered as a part of the plant in so far as it is required in the operation of the plant. I should consider it a part of the plant considering the plant as a going concern. I would consider the transmission system distinct from the plant but that would also be taken into consideration, if you will speak of this as an electrical generating and distributing and transmission system, but the plant is usually confined to the [406—122] generation of the elec-

(Testimony of C. L. Cory.)

trical energy and the distribution and transmission to the system.

While I have been working at this work I have learned of the method of bookkeeping or system of accounting used by the Washington Water Power Company in their work. I have appraised several plants outside of the one I am appraising at the present time for the plaintiff company. I have appraised the entire system of the Pacific States Telegraph & Telephone Company in San Francisco. The entire plant and system of the Los Angeles Gas & Electric Company, at Los Angeles. The entire system of the Santa Barbara Gas & Electric Company in Santa Barbara, for the City of Santa Barbara. The Modesto Gas Company, for the City of Modesto. The Vallejo Electric Light & Power Company, for the City of Vallejo. In appraising that property one of the ideas was of finding out what the cost of reproducing the property at that particular time would be; those were the instructions given to me; and for the determination of a reasonable rate in connection with the work for the City of San Francisco, on the telephone company's property, and for the purposes of taxation.

The particular ones I appraised for the particular purpose of taxation was the plant of the Pacific States Telephone & Telegraph system in San Francisco, and the Los Angeles Gas & Electric Company, for the purpose of determining the reasonable rate for gas and electricity, and also for taxation purposes. For the City of Vallejo, in connection with

(Testimony of C. L. Cory.)

the Vallejo Electric Light & Power Company, for the purposes of a reasonable rate of taxation. The Santa Barbara work [407—123] was solely the matter of rates. On the Modesto Gas Company for the City of Modesto, for the determination of possibly the reasonable rate for service, and also for taxation.

I have read a great deal of literature in connection with hydro-electric plants and electrical works of various kinds. I do not know that Foster is a standard authority. I know Mr. Foster very well. I would not want to say he is not an authority, nor would I say he is an authority. Mr. Foster's work has been primarily that of compilation. He is the author of one of the best electrical hand books we have. I would say this, that Mr. Foster and his publications, his compilations, ought to and certainly would be considered among the first authorities upon valuations or appraisals. I would say that Daniel W. Meade is considered an authority on water power engineering; he is professor of engineering at the University of Wisconsin. He has been largely identified with the work of the Wisconsin Railway and Tax Commission. Mr. Foster is connected with the staff of J. G. White & Company, a large engineering firm having to do with construction of large installations and valuations, and general work. I have been a student and have read a great many reports of railroad commissions and public service commissions.

Depreciation and amortization are two entirely

(Testimony of C. L. Cory.)

different things. Amortization is defined, I think, as the extinction of a debt. As applied to valuations, amortization means this, that if a certain expenditure has been made which should be carried indefinitely to capital account, an amortization fund is established. I will give you an illustration of that. If it should be decided by the courts or a commission [408—124] that an investment of a public utility company was unwise, not justified, and injustice to the people, that public utility might be—some of them have been—instructed to establish an amortization fund, which at the end of a certain period will extinguish this investment, and the rates will be made large enough to set aside this fund, but amortization is a fund which is set aside to extinguish an expenditure for some certain thing. Depreciation is a fund which is set aside to maintain that particular element, to the greatest extent. Amortization is toward eliminating that; depreciation is toward the upkeep of it. [409—125]

**[Testimony of George B. Colpas, for Plaintiff
(Recalled—Cross-examination).]**

GEORGE B. COLPAS was recalled to the stand and in cross-examination by Mr. ELDER testified:

I cannot give you the net earnings of the Spokane Washington Water Power Company plant; I haven't the data here for that; I cannot give the net earnings after deducting operating expenses, maintenance and administration. If when you speak of net earnings you mean the

(Testimony of George B. Colpas.)

net earnings by the gross earnings less the operating expenses, maintenance and administration, I would say that we do not segregate the net earnings of our Spokane plant from the other power plants of the company. I take account in our books of the amount of depreciation. We do not depreciate our individual plants, we depreciate the entire plant. In arriving at the cost of the plant at Post Falls not one cent for depreciation has been figured on that. Every year I take account in our books of depreciation on the entire property. The \$1,068,844.90 is the actual cost of the plant without depreciation. Every betterment was charged to the plant—what was made on the plant was charged to that account. We have a sinking fund for the purpose of taking care of the bonded indebtedness.

**[Testimony of D. L. Huntington, for Plaintiff
(Recalled—Cross-examination).]**

D. L. HUNTINGTON, recalled, and upon cross-examination by Mr. ELDER, testifies:

We paid the Cable Miling Company \$40,000 for their property. I do not remember exactly how much horse-power they had there; it was somewhere between 300 and 400 horse-power; we began furnishing power to the mines in the summer of 1903; we furnished that power from Spokane until we completed the Post Falls plant; then we transferred the power we were using in the mines generated in Spokane to the various businesses in Washington to which we were furnishing power and used the

(Testimony of D. L. Huntington.)

[410—126] Post Falls power after that for the Coeur d'Alene mines in Idaho; one of our transmission lines runs from Spokane, or, at least, there is a line running between Spokane and Post Falls from which a branch has been cut off to the Coeur d'Alenes which we call our No. 1 line, and there is another line runs directly from Post Falls to the Coeur d'Alenes, which runs along the north end of the Lake Coeur d'Alene which is our No. 2 line. After deducting the operating expenses, and depreciation, and losses from bad debts and proof of loss entries and maintenance, all of the things that go to make up the costs of operating, then the bond interest is deducted and the remainder is available for dividends or surplus. The market in Eastern Washington is gradually growing for electricity. It is not growing very rapidly now, but it has grown quite rapidly up to this year, and also in Idaho.

(Document marked Exhibit 1 for Identification.)

Defendant's Exhibit No. 1 for identification is a book published by and under the direction of our Company.

(Document marked Defendant's Exhibit No. 2 for Identification.)

Defendant's Exhibit No. 2 for identification looks like a copy of one of the annual reports that we printed. It is either one of them, or one printed exactly like it. I think it is one of them. I cannot remember the figures; I wouldn't question it myself.

(Testimony of D. L. Huntington.)

Redirect Examination.

(By Mr. POST.)

The Cable Milling property which we bought for \$40,000 consisted of certain land and water rights and the flour mill. There was a flour-mill on this plant. I do not know how many acres of land there was. I do not remember whether we had bought the Post Falls property at the time we [411—127] built the transmission line No. 1. We bought the larger part of the Post Falls property from people who were operating in mines in the Coeur d'Alenes, Finch & Campbell and R. K. Neal, etc., and upon the understanding that we were to develop Post Falls for the benefit of those mines up there. I think we made a contract for power with them and they concluded the purchase of the property about the same time, because I remember there was a stipulation that we should furnish them power or they wouldn't want to sell us the property, and the sending of electricity from Spokane was temporary until we got the Post Falls plant completed. I have brought up the deeds and contracts we have in question to the deal with Martin and Strathan; these three papers here are the Strathern instruments, and these two are the contracts and deed with Martin.

(Documents marked Plaintiff's Exhibits Nos. 10, 11, 12, 13 and 14, which were offered and received in evidence.)

One piece of this land had on it some kind of a mill. The Plant Company moved that mill or paid the expense of moving it, costing some \$15,000. I

(Testimony of D. L. Huntington.)

acted for the company in the purchase of the other property there at Post Falls, and I think from my experience knew what the value of such property was at that time. The value of the Martin property over and above the \$15,000 paid for moving the mill was about \$30,000, because if we had destroyed his mill and given him nothing in its place, the compensation would have been greater. As a matter of fact, I think we negotiated with Strathern for the whole property and should have fixed it up with Martin; that is what I remember now. I fixed the value of the whole purchase of the Strathern and Martin property at \$30,000 in addition to what we paid him to move his buildings. *The contract called** [412—128]

Recross-examination.

(By Mr. ELDER.)

I did not testify that I considered 375 horse-power of electricity, delivered perpetually, to a person, worth only \$30,000 in 1903. We gave 375 horse-power of electricity in perpetuity besides paying \$15,000 for moving the mill for that property. I should think the horse-power delivered in perpetuity would be worth more than \$30,000.

[**Testimony of C. L. Cory, for Plaintiff (Recalled—Cross-examination).]**

C. L. CORY was recalled upon cross-examination by Mr. WERNETTE, testified as follows:

Beside the straight line system of figuring depreciation, there is a method commonly known as the

*Remainder of sentence does not appear in original certified Transcript of Record.

(Testimony of C. L. Cory.)

curved line of depreciation, the difference between the two being this: Having estimated the ultimate life of the plant you can either set aside each year the same amount, assuming the depreciation corresponds to the life of twenty years, then you may set aside as a depreciation fund 5 per cent per year from the day the plant is completed; that is the straight line method. The curved line method would be to set aside a smaller amount during the first part of the life of the plant, placing each year what you set aside, either theoretically or practically, at compound interest, to the end that at the end of 20 years there will have been accumulated by that time, as the fund grows and as it draws interest also, an amount equal to the total value. I would arrive at the life of a plant such as the plant of the Washington Water Power Company located at Post Falls, by taking into consideration, first, the life of the different parts, as estimated, based on experience, the progress of the art or the business, and the life of the market supporting the plant, the life of the income coming from such market, the possibility of the investment, either [413—129] in part or in whole, being superseded by more economical methods of developing energy, and matters of that kind. In arriving at the estimated value of the plant, I took into consideration what the life of the Post Falls plant was. I considered the depreciation on the dams to be 2 per cent. My estimate is that the dams would in all probability be useless or of no value for the purposes for which they were built at the end of 50 years; that the concrete will exist and be a physical

(Testimony of C. L. Cory.)

structure, I haven't any doubt, maybe for 100 years. In fixing the value of the plant I would take into consideration the usefulness of the plant at the end of 50 years. I believe there is no rule that has ever been formulated as yet whereby it can be figured that depreciation on dams such as the Washington Water Power Company had at Post Falls depreciated to the extent of 2 per cent per year. The decision upon which I base my definition of depreciation was from the Supreme Court of the State of Oklahoma in the case of the State of Oklahoma vs. Pioneer Telephone Company. I am merely referring to certain decisions that have been compiled in Mr. Foster's book, *Engineering Valuation of Public Utilities and Factories*, the edition of 1912. Also what is generally known as the Kansas City Water Works case in the opinion of Justice Brewer. Perhaps one of the principal and noteworthy decisions is that of Justice Peckham in the case of *Wilcox v. Consolidated Gas Company of New York City*. I think those are all given in Foster's work. They are referred to inasmuch as he has quoted at length from many decisions. I made a very thorough examination of the plant of the Washington Water Power Company at Post Falls and also examined their power line the whole length of the line. The physical life of the poles used in power-lines or pole-lines depends a great deal upon climatic conditions of the country [414—130] in which the poles are placed, the useful life, not so much as with any particular quality of pole. I would say in general that

(Testimony of C. L. Cory.)

the physical life of poles used as poles in the ground would be somewhere around 10 years. It would depend upon the size of the poles that were used, the strain under which the pole was operating, and depends upon the material of the ground in which they are placed, and so on, and the character of the wood. Cedar, which is commonly known as Idaho and Washington cedar, being unquestionably the best type of pole to use. I did not go along the power lines of the company from Post Falls up to Shoshone County and examine those poles to find out what the conditions were under which the poles are being placed. I examined them only in passing along in general over their entire property, but I have not made a physical examination of their pole-lines to dig into the ground and find out the conditions under the ground at all. And when I made the statement yesterday as to the average life of a pole-line, I had particular reference to the various classes of pole-lines of the Washington Water Power Company, and which means that at the end of between 12 and 15 years all of those pole lines would have to be replaced.

Last year, when I began the work of ascertaining the best method of getting an inventory of the entire property of the Washington Power Company, I very carefully examined the costs of various kinds, primarily to ascertain the general policy that the company had pursued in keeping the property in an operating condition, in other words, if an expenditure was made I wanted to, in my own mind, decide

(Testimony of C. L. Cory.)

as to whether that expenditure should have been charged to maintenance, should have been charged to depreciation, should have been charged to extensions, or capital account, and in doing that I made a very careful investigation of the maintenance charges for the years 1909 and 1910, and up to July 1st, 1911, of what might be [415—131] called the newer pole-lines of the company. Those are, I think, about an average of 40 to 45 feet; also of the older pole-lines, something like 35 feet; also of the steel tower line running from Little Falls plant into substation No. 7, 29th Avenue substation. I went over the records of the company and found in a general way for those years 1909, 1910 and 1911 that the maintenance charges would vary from year to year, but over that period would average about \$100 a mile. The line between Post Falls and the 29th Avenue substation in Spokane, the average maintenance charge was about \$3,300, and that line is 35 miles in length, and that with the same work that I have constantly done in attempting to arrive at whether the costs of operation of a utility were fair in these other valuations, tried to get at the matter of whether certain expenditures during each year were properly maintenance, or should have been charged to capital account, in getting the cost of operation—my experience in that sort of work and the character of these lines, where they are located, and so on, led me to that conclusion, and I therefore testified to that effect. I do not think I could say that I based my answer mainly on the records and files of the corporation, but I certainly

(Testimony of C. L. Cory.)

took in to consideration the facts which the records showed with reference to their pole-lines to indicate to me the local conditions. I should consider that an average rate of depreciation of 8 per cent per annum upon the entire structure, including wire, cross-arms, poles, and the different classes of pole-lines, taking the average of all of those into consideration. On some of those pole-lines a greater rate of depreciation ought to be charged, and others less, but the average would be about 8 per cent. I stated yesterday that a fair maintenance charge on the dams at Post Falls plant would be approximately \$3,000. I arrived at that amount after considering the maintenance [416—132] the dams such as those at Post Falls, that are used very considerably for the control of water, the gates, and structures of that kind, and by taking into consideration the actual maintenance charges that have been found to be expended upon that structure, I have also taken into consideration maintenance charges for dams with their gates and control devices, of which I have knowledge, and the maintenance charges that I am familiar with and know of in other places of similar construction, concrete dams entirely, with control gates and so on. I place the percentage of depreciation on the actual cost in the first place. The depreciation is deducted constantly from the first cost, and is usually expressed in the percent of the first cost. I do not think I gave really any consideration of the first case of the South Channel dam at Post Falls; the maintenance except in isolated cases is quite independent,

(Testimony of C. L. Cory.)

possibly, of the first cost. I am quite sure that I did not have some particular amount to figure on at a certain per cent to arrive at the sum of \$3,000. To assume that the cost of maintaining a thing is a percentage of its first cost would be the wrong principle absolutely in my mind, that is, as a method of arriving at it. It might be a per cent, but as a method of arriving at it, otherwise we would say that a concrete dam, the per cent of maintenance would show that maintenance very much more than the corresponding percentage of a wooden crib dam, for instance, which would be the wrong principle. Except as the item of maintenance would enter into the cost of operation, it is necessary to ascertain and determine what the maintenance is in order to arrive at the actual value of the plant at any given time. I would consider 5 per cent as a reasonable percentage of depreciation on machinery such as water turbines and generators such as the Washington Water Power Company [417—133] have based on the ultimate life of 20 years. I should say the fair return upon the investment should be not less than 10 per cent of the investment, annually. A great many things would enter into my conclusion in the matter. I think one of the foremost would be the principles laid down in the Consolidated Gas case, the decision of the Wisconsin Commission dated March 8th, 1910, upon the Madison Gas & Electric Company case, the decision of the St. Louis Commission in the United Light & Power Company case, the decision of the Maryland Commission, the decision of the Commis-

(Testimony of C. L. Cory.)

sion in Chicago on telephone rates. I have a great many others in mind. By referring to those decisions I do not mean that the investment is entitled to 10 per cent. In the Consolidated Gas case there is no statement as to what is a fair return, but the principles upon which a fair return should be brought. Those principles are, that there first must be a return of interest on the investment, which may vary from 4 per cent to 7 per cent, as outlined in those various cases. Over and above that, to cover the hazard of maintaining the capital invested, to cover the hazard of competition, to cover the hazard of any fluctuation in the gross revenue, due primarily to difficulties such as labor difficulties, or matters of rate regulations, public utilities, there is a profit definitely and specifically indicated over and above any interest rate, this profit varying as I remember the Madison case specifically,—the profit there set forth is between 2 and $2\frac{1}{2}$ per cent, over and above an interest rate. In other words, in this case my conclusion is based upon those decisions. There are some decisions of the Wisconsin Commission where 10 and $12\frac{1}{2}$ per cent return has been held as reasonable. Based on that, and based upon the character of the market, and particularly the mining load, I have come to the conclusion, and state, that a rate *less than** [418—134]

There are certain instances in the reports of the Wisconsin Commission case where 10 and 12 per cent are allowed as reasonable. I think those are

*Remainder of sentence does not appear in original certified Transcript of Record.

(Testimony of C. L. Cory.)

rather exceptions than the general rule. In the majority of cases the rate is a good deal less, but in the Madison case, the St. Louis case, the Chicago Telephone case, in each where 8 per cent was held as reasonable, there certainly was no question as to the fact that the market was there for all time, and was increasing, and the hazard of doing business was lessened by the entire exclusion of possible competition. The actual rate of interest which an enterprise has to pay for the money necessary to construct a plant will not protect from the reduction in the value of that property by means of competition. I can illustrate that very definitely. Suppose a company issues bonds to extend its electrical transmission system, suppose a market, such as actually occurred in the Central Colorado Power case, is ended, the integrity of the investment is gone.

In answer to your question as to what hazard would they have if the parties that loaned the money did take over the plant, I say that if the individuals operating the plant had no interest whatsoever financially, they certainly could not lose; the bondholders would lose. If you will consider the protection only of those outside of the bondholders, the rate of interest which the bondholders give for the money which was invested in the property should be the proper rate of interest. There are other things to be considered.

It isn't going to be a good thing to build a public utility and have that public utility serve a useful purpose in a community, and, for any reason, because of inadequate considerations of interest and

(Testimony of C. L. Cory.)

return, cause that utility to become bankrupt. The mere fact that a water power company generates electrical power and a mining company purchases that electric [419—135] power, does not alter the fact that the line between the interests of these two is purely artificial. The ultimate economy in the development of the natural resources of any community must depend upon the mutual operation of such people as electrical power companies and mining companies and transportation companies. A reasonable rate of return must be based upon the fact that the utility can continue to do that which is necessary for the development of natural resources, and for that reason, to my mind, would not be reasonable. Before the rate of interest is changed or figured out at all, that the administrative charges, the maintenance, the depreciation, the interest on the money invested, is taken out first before we start to figure as to what the fair rate of interest should be. Under the circumstances referred to, the rate of interest charged by the bondholders would not be a fair rate of interest, because conditions may arise, and actually have arisen, where in the conduct of such business, it is necessary to get a rate of return which will retire the investment, which is exactly the case where a mining district is being worked, and you cannot depend upon that mining district continuing for all time.

I did not take into consideration, nor is my purpose to take into consideration, the rate of interest paid upon the bonds or stock, or the capitalization, in

(Testimony of C. L. Cory.)

stating that the Washington Water Power Company was entitled to 10 per cent on the investment. I would not first take the 5 per cent or the interest of the corporation out of the gross receipts. I would not consider that 5 per cent at all, because it is very possible the bonded indebtedness might bear an absolutely wrong proportion to the value of the plant. I figured the net revenue in arriving at this percentage. The interest on the bonded indebtedness was not taken out before I could arrive at the net income. In arriving at the true valuation of the [420—136] property such as the Washington Water Power Company, one of the most important items would be the actual cost of the property, if that can be determined. That is not conclusive because the value of the property might be much less than its actual cost, or it may be very much more, depending upon other conditions. Another element would be the cost to reproduce the property. A most important element would be the physical condition, the operating condition of the property at any time, sometimes alluded to as the existing value, sometimes called the cost less depreciation, sometimes called the depreciation cost, and most always now, I think, called plant balance at any time. The permanency of the market should be given considerable consideration. The fact as to whether the market can, with their operations and their expenses, continue to pay a rate which has been in existence. Certainly the gross revenue for as many years as are available and necessary, the expenses for as many years as are available, the maintenance charges, all

(Testimony of C. L. Cory.)

expenses, then the possibility, if there be any, of appreciation in the price of the commodity produced. Similarly, the possibility of there being a decided lessening in the value of the output for any reason, due to the fact that they do not use them any more, or the fact that there is some cheaper method of producing something else which takes its place. There may be, in general, other things that I certainly would take into consideration, but they are possibly the principal ones. I most certainly take into consideration the value of the going concern. I considered the 10 per cent in addition in this case to the existing value. In other words, the depreciated cost or the plant balance at this time. There is a very great difference between what the authorities consider as the value of a going concern, between a manufacturing establishment such as a factory, and a hydro-electric power plant, such as that of the Washington Water Power Company. There is a difference in [421—137] this way, usually in rate-fixing matters the value over and above the physical plant is sometimes determined by using the expression "cost of development business." Now, an ordinary large metropolitan newspaper would certainly have a very small value, physical plant, but the value as a going concern, and the value perhaps of goodwill, might be many times the cost of anything which it really owned, physical ownership. Now, on the other hand, in a manufacturing business, the value of goodwill might come in, the value of going concern would come in, perhaps to a lesser degree. Goodwill is perhaps

(Testimony of C. L. Cory.)

more that which causes one by personal preference to go to some particular hotel or take some particular newspaper. Now, when it comes to a hydro-electric plant such as this, the going concern value must be measured by the character of the market which it has, the value which the plant has, because it is not only physically existent, with no customers and no revenue, but it is established, without any question, with a revenue; that revenue can be depended on for a long period of time, or it can't be depended on. The revenue is figured as regards the rate, or it may not be figured, because something may take its place. Those would certainly be items. The going concern item and percentage I have no doubt may be found anywhere from nothing to 100 per cent. It would depend upon the cost, but they might have expended a good deal and yet be just on the point of having something substituted for their product. That would be one of the principal items that would have to be taken into consideration, but I think it would not be quite as important as the other. In arriving at the value which I gave you this morning, I took into consideration all of these elements. I included in that the fact of the company having a reservoir covering over 45 square miles of lake, besides a great reservoir basin in the St. Joe, St. Maries and [422—138] Coeur d'Alene Rivers, besides considerable property which is allowed to be overflowed by reason of the facts *if* the company having easements on that property. In attempting to arrive at the value of the plant from the standpoint of its present

(Testimony of C. L. Cory.)

physical condition, I did not take into consideration the reservoir, the cost of the reservoirs, or the cost of making the reservoir, whatever that may be, outside of the dams. In attempting to arrive at the average net revenue for a number of years and using that as a method to capitalize all of the property in Idaho, I did take into consideration the cost of the lands, and, in fact, so far as I know, everything which is invested in Idaho, and deducted from that capitalization, to get at an indication of the value of the Post Falls plant on the basis of its income. I took into consideration that there was a reservoir, because if I had not, I would have come to the conclusion that this plant will have capacity only when other plants have capacity and the very time when electrical energy is most needed, when the minimum flow of the stream comes alone, this plant would have practically no capacity at all. I did not take into consideration the fact of that reservoir which is created by their plant at Post Falls as to the benefit that plant gives to the plants at Spokane and Little Falls, any more than I took into consideration the value which the stored water during the summer might have to anybody who wanted to utilize it. I placed a value on the reservoir in arriving at my full cash value which I gave this forenoon in the method of adding together all the investments in order to deduct for this investment. I did not use it any other way. I did not have any specific per cent of the total or any specific amount that I created or allowed for the reservoir in arriving at the value. I took

(Testimony of C. L. Cory.)

what has been introduced here as evidence as to the assessed value, I believe, of certain lands required for the [423—139] reservoir. I took it as a factor increasing the output of the plant to the extent that the average output of that plant has been at the rate of about 7,000 horse-power, and that it could have been nothing like it if there had not been this reservoir behind it. The gross income is reduced by the maintenance cost, the depreciation cost, the salaries and wages represented by operation, the taxes, the cost of administration or management; that is deducted from the gross revenue, then the net income is the difference between the sum of those last items and the gross. I think they are the only items I figured in deducting from the gross to arrive at the net income. I took the average of the net revenue for the years 1908, 1909 and 1910, capitalized that at 10 per cent in order to arrive at the total Idaho matters, deducting from that certain items in order to get a sum which is an indication—not final—but one of the indications of the value of the plant. I deducted the investment in transmission lines and substations in Shoshone County \$262,585 in arriving at the amount given. That is the value as existing on January 1st, 1911, that is the value as set forth here in testimony, deducting the depreciation up to that time. That is the value I took in figuring my amount. I have also deducted the overflow. The figure which I use was \$175,851 for the overflow lands as assessed and the pole-lines in Kootenai County, as assessed, \$183,000, the substation at Cataldo on January 1, 1911, \$20,880,

(Testimony of C. L. Cory.)

and nothing more except that in my statement this morning I did not know the average life of the pole-lines in Shoshone County, and I took, in testifying this morning for the amount deducted, an amount which was approximately—from present reproduction cost, which is slightly different from the actual cost as testified to here, and taking off the depreciation up to date for that. I merely took the value of these various pieces of property from the amount that was [424—140] depreciated on January 1, 1911, from the amount that was capitalized and I deducted from that the capitalized income at 10 per cent. The principal is that, and there is a certain gross net revenue, that is, from all kinds of business. Now, there are certain investments outside of the plants. In order to get this net revenue, of course it is required to have these other investments; by deducting the sum of those investments from the average net revenue for three years at 10 per cent, which is \$164,116, and so on, I get an amount which is an indication of the value of the Post Falls plant, based upon its earning capacity. I did not figure those transmission lines, substations and property in Shoshone County as a part of the Post Falls plant. There are two things necessary for this plant, to conduct the business in Shoshone County and to get this net revenue, if you please. We will say the Post Falls plant is one part of it, and certain transmission lines and substations and other things. Now, in order to get at the value of a figure which will indicate the entire earnings which will indicate the value of the plant on

(Testimony of C. L. Cory.)

the basis of its earnings, I have taken the entire earnings, which will cover and must cover all costs including generation and operation of these pole-lines. Now, then, we get a net revenue, which, capitalized, represents a figure which indicates the value of all of the property in Idaho. Now, I deducted from that figure the sum of other figures, in order to arrive back at the value of the plant, or a figure to indicate the value of the plant, on its earning capacity. In other words, I credit this value in Shoshone County at the same rate I credited the value here and all of these other items in the same way. I did not deduct the lines running down to Spokane and the distribution system in Spokane from the capitalized net income of the plant, but I deducted all the revenue that comes from the plant in that direction, in order to get [425—141] the net revenue in Idaho. If it is fair to deduct the whole working operations in Shoshone County where a part of the power is sent and distributed, it would be perfectly fair, and only another method of arriving at the same result, to subtract the fair value or cost of the distributing of the power in Spokane and the power lines running to Spokane, but in doing so you would not take the net revenue in Idaho, but would take the net revenue from all the sources of the plant. You would arrive at practically the same result. You would also have to consider the cost of that distribution and of all of these other items. I do eliminate then all of the income of the plant except that coming from the mines. I credited the amount of the power that goes to Spo-

(Testimony of C. L. Cory.)

kane at the rate of .6 of a cent per kilowatt hour, thereby reducing the net revenue of the plant given, as a result, the net amount, and after considering the various items that were necessary to conduct that business in Idaho. I mean by reducing the net revenue by that amount we can consider the Post Falls plant as having a net revenue which may be divided into two parts. The revenue which comes from the current which goes to Spokane and the net revenue from the current which is used in Idaho. I have considered that which goes to Spokane if you consider the revenue from all sources from the Post Falls plant. In this statement I have not considered it. The results would have been exactly the same. There would have been added and subtracted the same amounts. I gave no figures as to what I considered was the cash value or full value of the plant. I gave the figure \$916,710.14, but I modified the question of the depreciation on the interest during construction. That was one figure I gave as a figure indicating the value of the plant based on its earnings. I gave another figure of \$988,573.85, as indicating the cash value of the plant based [426—142] upon its present physical condition, adding to that 10 per cent for a going concern. \$988,000 includes the 10 per cent. I am trying to give you the two figures at which I arrived. Now, on the basis of the present physical value of the plant down there, to which I have added 10 per cent for going concern, I arrived at the figures \$988,573.85. \$898,000 is increased by 10 per cent of itself in order to get \$989,000. I will

(Testimony of C. L. Cory.)

answer that in another way. \$898,708.50 added to 10 per cent of itself, or \$89,870.35, gives as a result \$988,573.85. The figure \$817,000 does not include the cost of the land, which does not depreciate, which I considered was not a depreciable quantity. That is, the \$817,000 is the value of the plant without the land, of the depreciable part of the plant, and the \$988,000 takes land and everything else. I took the value of the land at \$109,272.44, taking the present physical value of the plant as estimated by Mr. Wiley as \$817,402.79. If you add the price of the land to that you get \$926,675.23. Then there would be 10 per cent added to that for a going concern which amounts to \$1,018,742.75. I want to be distinctly understood as testifying that those are figures as indicating a value, and not my final and ultimate conclusion as to what the value would be. That is, perhaps, a little too far to go. No interest of any kind had been deducted from any sum in order to arrive at that net revenue. I take into consideration the amounts that were given here as net revenue, that is, I do not take account of the interest in arriving at the cost of construction. That is another matter than arriving at the net revenue.

Redirect Examination.

(By Mr. POST.)

Taking into consideration the value of the plant based upon the ability of it to earn, or its earnings, and also taking into consideration in determining the value of the [427—143] plant, its present physical condition and that it is operating concern, I be-

(Testimony of C. L. Cory.)

lieve the value of the plant to be approximately \$975,000. In figuring the Shoshone county transmission lines at \$264,585, I have depreciated the cost of it \$82,140, approximately 30 per cent. I think no public body, such as a legislature body, under statute, has fixed that item of 10 per cent as a going concern. I have not taken into consideration as a hazard of the business that one of the hazards of a public utility is the fact that a public utility must keep going whether it makes money or not.

Recross-examination.

(By Mr. WERNETTE.)

In arriving at the depreciation on the Shoshone county transmission lines, which amounts to \$82,240, I did not take into consideration the betterments which have been made from time to time on those transmission lines. I considered that the lines had been in course of construction since the first Coeur d'Alene No. 1 line was built. Independent of any percentage of depreciation, I considered the Coeur d'Alene line No. 1 as approximately of little value, and I considered that as a very large factor. The average depreciation covering that period is based on 30 per cent depreciation with the average life. I did not take into consideration anything which would be in the nature of replacing entirely parts of the transmission, and therefore making its value greater now because of such replacement. I did not consider anything in the way of betterments or salvage.

On examination by the Court, witness proceeded:

(Testimony of C. L. Cory.)

In making my calculations, I did not make it by allowing, as against the present value of the property, the total depreciation according to the annual percentage that is adopted; in other words, the property has been built five [428—144] years and the annual depreciation is 2 per cent. I did not deduct 10 per cent from its original cost to get what I call its present depreciation value, because what one must do, and what I did was to take the value of the cost of the plant up to a certain time, say January 1, 1908, and take the depreciation for that year and carry that out. In other words, it wouldn't average 10 per cent, because, for instance, there was an increase in the value of machinery in 1910 in a large amount. I allowed 2 per cent depreciation on the dam. The dam has been built 10 years and I deduct 20 per cent from its cost and get its present depreciated value, and in considering the revenues of the present years, for instance, I deduct 20 per cent for depreciation as an item of expense, and that is on the theory that the whole dam would become worthless at the end of 50 years. I think that is fair. The 2 per cent that was deducted 5 years ago, supposing it was \$5,000, is set aside for the purpose of doing anything that may be necessary during the 50 years or not used at all until the end of the 50 years to replace and make good that dam, or something which will do the same thing; otherwise, if it be true that if at the end of 50 years the dam will be deserted and not used for the purpose for which it was intended, you have only been getting a rate

(Testimony of C. L. Cory.)

of interest on the money and allowing the capital to be lost in the transaction. If you set it aside and invest it to the end of 50 years, figuring by the curved line of depreciation system, in which you would not set aside as much as 2 per cent during the first year, you will have 2 or 3 times the original capital, depending upon the amount of interest. I consider the life of the plant 50 years and allow 2 per cent per year, because it is a false assumption to assume that we can set aside a sum year and hold it intact. We find in actual practice that probably at the end of the first or second year we should go to this fund and get some [429—145] money out in order to overcome the depreciation during that period, and you should not calculate that the plant has depreciated 10 per cent at the end of 5 years, providing that has actually been done. I figure both in this case to get the full amount of depreciation, and yet take out the full amount of percentage of depreciation, because when that dam was built there were certain methods that had been developed then for the control of the water. Those methods have absolutely been superseded now. Without question, this fund, if it had been set aside at 2 per cent, must go to it in order to maintain the dam properly and any money expended in that direction should be added in order to determine your physical plant. That 2 per cent is operating costs; depreciation is an operating cost. We charge it off to cover depreciation. At the end of any given period if that depreciation has been used as it should

(Testimony of C. L. Cory.)

be, you are quite right. The plant will maintain at the end of each year its 100 per cent, and if you do not do that then the company should be charged interest on this 2 per cent. If this 2 per cent, for instance, had been set aside, then the company would have its present physical condition and some money set aside, which ought to be included. If it was not expended then it would have all the money plus the interest on it. If it had been expended, they would have the plant in its original condition so one or the other theoretically should not be included. The present value of a plant of that magnitude, to my mind, is not to be given so much weight. The theoretical value of the plant, counting its depreciation, would be its 100 per cent valuation. In other words, it would always, if this were done and properly charged each year, if we were right in our estimation, have its original value. The company would maintain its plant in its normal condition if it were physically possible to do so, so that there would be practically no depreciation or deterioration [430—146] in the physical plant. There should not be so much allowance made for future obsolescence as there has been in the past. I don't think as much in the future as there has been in the past, if you take a long period of perhaps 20 years, because there has been great obsolescence in that time, but it is certainly true that the changes in the size and magnitude and economy of such plants as these within the past three and four years has made obsolete without question machinery that

(Testimony of C. L. Cory.)

is not more than 5 or 6 years old, and we do anticipate obsolescence as a most important factor, particularly in all of those elements pointing to the electrical phases, due to the increase in voltage, requiring different, much more expensive installation, but much more economical; but I should say, from my experience, my judgment, if you please, that the growth and progress is so great at the present time that it is a fact that we are discarding apparatus which was considered the largest at that time built, and casting it aside and scrapping it, that is not over five or six years old. I would want to make a considerable allowance for that in a plant of this kind for this reason; investigation of the cost of producing electric power made by myself indicates that the maintenance and operating cost of the Post Falls plant is as much as 4 times in proportion to its output as the Little Falls plant, a plant built but a few years later. The maintenance and operating cost of the Post Falls plant is very much larger, due to these machines. For instance, the Post Falls have a capacity of about 3,000 horse-power. Little Falls have a capacity of three times that much. They are more modern machines, require very few attendants. In the whole matter we are striving for economy, and it is unquestionably true, and it is the case, that plants of 10 and 12 thousand horse-power are being shut down and not operated because substitute power can be delivered [431—147] from larger plants under better operating conditions, the reason being this, that the state of

(Testimony of C. L. Cory.)

the art, say 5 years ago, was such that very large amounts of money necessarily could not be put together, and it is developing all the time. We have 30,000 horse-power generators to go into the Great Western Power Company's plant, two of them. It is estimated that the maintenance charges on those machines will be such that they will shut down probably 10 plants now in operation. Those are the things that cause us to give most grave consideration to obsolescence, and when a pole-line is built it doesn't pay to pull it down; the cost of pulling down the poles and pulling the wire off the poles is such that it doesn't pay to pull it down. In other words, obsolescence should be one of the large items in the depreciation. And in turn, by substituting the new devices for the old, you would reduce your cost of operation and maintenance. The whole point comes down to this: how can we most cheaply produce the kilowatt hour for some particular purpose, or as horse-power? If it is more economical to pay the operating expenses of the plants that are becoming obsolete, we will do that. If it is more economical to spend the money to put in 30,000 horse-power units, we will do that and abandon the old. Exactly the same thing to-day occurs in railroad transportation; the size of the locomotives; the amount invested in track, bridges, etc.

Examination by Mr. POST.

Take, for illustration, a new concrete dam after a year has elapsed. Although there is nothing to be done to that dam, and it is an efficient dam, it has

(Testimony of C. L. Cory.)

still depreciated. Assume that by using this 2 per cent or any other per cent you have \$5,000 in the fund, it may be by the time you had that \$5,000 in the fund you either want to use the \$1,000 or \$5,000, [432—148] or perhaps \$20,000 on account of something that has happened to the plant, to be used for replacement. That depreciation fund is not a fund to be used at the end of the period of time, but is to be used whenever the thing happens requiring a replacement. And in electrical plants in the present state of the art, it is impossible to determine when there will be a call upon that fund for replacement purposes; it is but an estimate. It is unquestionably the fact that that is one reason why they use the straight line method instead of the curved line method of figuring depreciation.

Examination by Mr. WERNETTE.

I don't know whether the amount that is deducted by depreciation is invested by the company. The custom is different with different cases. I can give you specific instances of what the custom is.

[Testimony of R. L. Rutter, for Plaintiff.]

R. L. RUTTER was called as witness on behalf of plaintiff, testifying as follows, on

Direct Examination.

(By Mr. POST.)

My name is R. L. Rutter. I reside in Spokane; have resided there for 20 years. I am a banker, connected with the Spokane & Eastern Trust Company, as General Manager, and have been connected

(Testimony of R. L. Rutter.)

with this bank for 18 years. I have been general manager for 3 or 4 years; I have also been secretary. That is a trust company. I am also president of the Western Union Life Insurance Company. That company makes investments in loans secured by first mortgages on city property and country property in Idaho and Washington. It has loaned over one million dollars in that kind of loans, and has now outstanding in the neighborhood of \$563,000. I cannot tell what proportion is in Idaho, a considerable part is in Idaho. [433—149] Those loans last year were at the rate of 8.2 per cent. The property is farm and city and town property. The Spokane & Eastern Trust Company also has mortgages on real estate and at the present time has about \$450,000. These mortgages are on property in Washington and Idaho on improved city and farm property. The lowest rate in the State of Idaho is 8 per cent and the highest 10 per cent. The 10 per cent is on \$5,000 loan on mostly city property. 8 per cent is the average rate of interest on loans of that kind. I have had some experience in bond issues on public utilities, some in the State of Idaho. My company has placed of bond issues of public utilities hundreds of thousands of dollars. We have handled about \$20,000,000 security since I have been there, covering a good many issues. Bonds securing by mortgage or trust deed for the full value of the property are not marketable no matter what the rate of interest. It depends somewhat upon the character of the plant as to the marketability of the

(Testimony of R. L. Rutter.)

bonds. I have had enough experience in the marketing of securities and in the banking and trust business so I can tell what is a fair rate of return and interest on a public utility like a hydro-electrical plant in Idaho. I would say at least 10 per cent.

Cross-examination.

(By Mr. ELDER.)

Your loans run all the way from \$500 up. I don't know what the largest loan is. On a bond issue we handle \$50,000; we have handled up to \$50,000 on first mortgages. The most of our mortgages in Idaho have been 10 per cent; it depends largely on legislation what the prospect in the near future is as to the per cent. I don't think the rate of money is less at the present time than that was a year ago. In fact, I know it is higher. I am not interested in the Washington Water Power [434—150] Company. My company is. The company has some stock in the Washington Water Power Company. A large number of bond issues are at a low rate, although we handled a bond issue of public utilities up here at 8 per cent discount that netted the seller a little bit less than 10 per cent, over 9. It is true that our company was agent or in the market itself for bonds of this county at 5 per cent. First-class farm loans generally bring from 8 to 10 per cent. Farm loans bring from 8 to 10 per cent. If the loan is made direct to the company it is pretty near up to 10 per cent; if the loan is made through an agent here the agent gets a commission above 10 per cent.

(Testimony of R. L. Rutter.)

In the city of Spokane, where you come into competition with large life insurance companies in the east, for instance, the Penn Mutual, they will loan on property situated at a particular point at between 5½ and 6 per cent. In addition to that there is a commission paid to the agent in Spokane, but that is a very small part of the territory served. We have right now over \$175,000 of 10 per cent loans in Spokane. Those loans run up to \$5,000, and I think we have one at \$10,000.

[Testimony of A. Cook, for Plaintiff.]

A. COOK was called as witness on part of plaintiff, and on direct examination by Mr. GRAY, testified as follows:

My name is A. Cook and I reside at Ross Station. Am in the abstract business here in Coeur d'Alene and have been in that business for a great number of years. I have examined the records of Kootenai County for the purpose of ascertaining what mortgages were given upon farm lands, tracts outside of the cities, in the year 1910. I have also made a list of those loans showing the name of the mortgagor and mortgagee, the descriptions of the land mortgaged and acreage, and the amount of the mortgage in dollars. I have examined the assessment-roll of this county for the year 1911 for the [435—151] purpose of ascertaining assessed value of the several tracts and pieces of land so mortgaged. I have also examined the records of deeds of this county for the purpose of ascertaining what transfers or conveyances of land were made in 1911 in Kootenai

(Testimony of A. Cook.)

county where there was other than a nominal consideration named in the deed, and have prepared some sheets showing the names of the grantor and grantee, the date of the conveyance, the description thereof, the amount of the consideration and book and page where recorded. I have examined assessment-roll for the year 1911 to ascertain the assessed valuation of each of these pieces of land. I have also examined the records of Kootenai county for the purpose of taking such city property in the city of Coeur d'Alene which was conveyed in 1911, where there was a consideration other than the nominal consideration given in conveyance, and have made some sheets showing name of grantor, grantee and date of deed, and description of the land. I have also examined assessment-rolls for the year 1911 for the purpose of ascertaining the assessed valuation thereof. These are the sheets which are attached to my affidavits filed in this case, and I have also these three additional sheets. Those sheets attached to the affidavits are copies of the sheets we made. These four sheets partly represent the conveyance of land in Coeur d'Alene with the recited consideration and the assessed valuations.

(Document thereupon marked Plaintiff's Exhibit No. 15.)

(Pages attached to affidavits thereupon marked Plaintiff's Exhibit No. 16.)

WITNESS.—In making those sheets I included all of the deeds and mortgages coming within the classifications which are mentioned thereupon.

(Testimony of A. Cook.)

(Exhibits 15 and 16 offered in evidence.) [436—152]

These sheets are all made up from the original records of the county in the recorder's office. Under the assessment valuation the amount is given as equalized, after the State Board had equalized it. That is, the amount on which the taxes were levied. The amount given there is the amount on which the taxes were levied. It was assessed at 15 per cent higher, whereupon the said exhibits were received in evidence.

Thereupon it was admitted by the evidence that the plaintiff appeared before the Board of Equalization of Kootenai County, Idaho, and protested against the assessment in controversy and introduced evidence shown by document marked exhibit 17, which was introduced and received in evidence correctly showed the proceeding had before the Board of County Commissioners of Kootenai County, Idaho, sitting as a Board of Equalization.

**[Testimony of Fred E. Wonnacott, for Plaintiff
(Recalled—Redirect Examination).]**

FRED E. WONNACOTT was called to the stand, and by redirect examination by Mr. GRAY, testified:

I have computed assessed valuation of those easements and fee lands on which taxes were paid for the year 1911 by plaintiff. There were 261 easements containing 6,917.31 acres, assessed at \$172,932.25, that being the equalized assessment. There were 15 pieces of fee lands containing 375.19 acres assessed

(Testimony of Fred E. Wonnacott.)

at \$11,256, and those lands were cut by the State Board 15 per cent, and assessed finally at \$9,570. There were 175 acres of land lying along the Spokane River between Post Falls and Lake Coeur d'Alene which were also assessed, other than the property of the plant. The equalized assessment was \$18,619, on which the taxes were paid. In a verified answer in this case, signed by me in paragraph 27, there is the following statement: "Answering paragraph 31 of plaintiff's [437—153] bill of complaint, defendants and each of them admit that in Kootenai County there are large areas of valuable farm lands valued at from \$200 to \$300 per acre, and so valued and held by the owners thereof, having an actual cash value of from \$200 to \$300 per acre, and a market value of from \$200 to \$300 per acre, on the second Monday in January, 1910."

I cannot tell from the answer just exactly where each particular tract of these lands is, but I can tell you some of them. Some of those lands along Hayden Lake are assessed from \$200 and as high as \$500 an acre. Those large areas worth from \$200 to \$300 an acre are situated between Coeur d'Alene and Hayden Lake, out around Dalton Gardens, but not there altogether. There are some farm lands out there and some lands along Hayden Lake. I cannot tell without going to the rolls where all of those farm lands are situated. I assessed farm lands outside of the city limits of Coeur d'Alene or lying adjoining the city of Coeur d'Alene as high as \$300 an acre. I assessed them right out north of town here ad-

(Testimony of Fred E. Wonnacott.)

joining the city limits. I think I assessed farm lands lying outside of the city limits at \$300 an acre in Section 12-50-4 West. I think a man by the name of Barber owned those lands.

(Thereupon witness was sent to examine rolls and later returned and continued:)

I will read over the list you wanted. The descriptions of the agricultural lands in this county assessed at \$150 per acre and more are Spokane Leather Company, Lots 20, assessor's plat 14, 1 acre, \$375. That is farm land situated in the northeast part of this township 50-4 West; that is a garden tract that includes just the acreage. Mrs. Gentry, Lot 2, plat 14, half an acre, \$175. That is not adjoining the [438—154] limits, but they are in the vicinity of the town here, perhaps. Robert Allen, Lot 10 and 11 in plat 26 in Section 12-50-4 West 5 acres, \$140 per acre. Fred Westberg, Lot 12, Plat 26, in the same locality.

(Witness temporarily excused.)

[Testimony of A. J. Wiley, for Plaintiff (Recalled).]

A. J. WILEY, recalled to stand on the part of plaintiff, and testified as follows:

Taking into consideration the reasonable cost of the plant at Post Falls as testified to by me, and the depreciation thereof as testified to by me, and taking into consideration the following facts, to wit, that the average net earnings of the whole system in the State of Idaho for the years 1908, 1909 and 1910 was \$164,900 and some odd dollars, and that the depre-

(Testimony of A. J. Wiley.)

ciated value of the transmission line and substations in Shoshone County is \$265,585; and that the value of the transmission line in Kootenai County is \$183,000; that the value of the substation at Cataldo is \$20,880; and the value of the overflow lands is \$200,000, and that 80 per cent of the business of this company in Idaho is in Shoshone County for power at the mines, in my opinion, was the fair market value of the Post Falls plant in January, 1911, and by fair market value I mean that which a creditor would be willing to take the same at from a solvent debtor was \$972,196.40.

On cross-examination by Mr. ELDER witness said:

I get at that value by capitalizing the net earnings and deducting from the net earnings the value of all the property in Idaho outside of the Post Falls station. I figured the net earnings \$164,166.14. I figured interest at the rate of 10 per cent. I took into consideration the value of the reservoir in this way, that that adds to the net earnings by increasing the output of the plant. I did not take into consideration the value which it added to this site and to this property by reason of the fact of increased revenue and increased [439—155] net earnings of the company by reason of its other power plants below this reservoir. I did not figure out myself the net earnings; the average net earnings are \$164,166.14; it is capitalized at 10 per cent—\$1,641,661.40. The depreciated value of the Shoshone County property on January 1, 1911, is \$265,585. The assessed valuation of the pole-lines in Kootenai County is

(Testimony of A. J. Wiley.)

\$183,000; the assessed valuation of the flowage lands in \$200,000; the depreciated value of the Cataldo switching station, \$20,880. The sum of these last four items is \$669,465. Deducting this sum of \$669,465 from the capitalized value of \$1,641,661.40 leaves a difference of \$972,196.40, which I consider the actual value of the Post Falls plant based on the net earnings. I am not offering any opinion as to the market value of that property. I hardly want to say that I have considered the examination which I made of the property personally in the estimate or figure which I have given. Of course the actual condition of the property had a certain element in my calculation. I was going to say that I had also made an estimate of value based on the cost of reproduction, but I consider the former, the one I gave you, the proper value myself, the proper method. I would not say that I mean that the figures I have given and the value which I placed on this property is placed on it from the figures which the company gave me. My estimate is based partly on the physical valuation of the plant. I, of course, would not consider the plant had this value unless I knew that no matter what the market value figured at, unless I knew it had a physical value back of it. It would have to have the two combined. I can explain it by saying that if it did not have the physical value back of it, it would not be allowed for any length of time to charge such rate as would return this present income, so that I think the two have to go together; you have [440—156] to have the physical value

(Testimony of A. J. Wiley.)

and the income value also. I am stating that it has no greater value. I think it has not any more value because it will not pay interest on any larger value. I also made an estimate of its value based on its cost of reproduction. These figures which I have given you are based entirely upon the income value of the plant. I have not considered the site at Post Falls as benefitted and increased in value by reason of benefits accruing to the other plants of the company lower on the river from the site at Post Falls and their reservoir created thereby. I think the other plants are benefitted by it, but I can't see that this plant is benefitted by the fact that it helps other plants. This plant standing alone would not be benefitted. The value of this plant to the Washington Water Power Company might be increased, but it would not be increased to any other owner. I can't see how it would be increased in value. The company have other plants to which it is contributing, but if I owned the plant it would not increase the value any because I was furnishing water to the Washington Water Power Company; I couldn't hold that water there; I would have to use it. I can't say that the fact that that plant and site holds the water, which allows other people to make considerable more power lower down the river would add in value to the plant, for the reason that if I operate that as a power plant I have to let the water go to do it. If I do not operate it as a power plant but hold it as storage, then I would lose its value as a power plant. In answer to your question

(Testimony of A. J. Wiley.)

whether by reason of the reservoir which is created by this site and dam at Post Falls, the Washington Water Power Company is enabled to increase its output at the Spokane plant by 12,100 horse-power, and is enabled to increase its output at Little Falls by 5,400 horse-power, I would say that that fact would certainly add to the value of the site of the Washington Water Power Company. [441—157] The capacity of the turbines and generators I testified to concerning is 2,250 K. W., and the water-wheels have sufficient capacity to drive the generators. They have a head there of about 52 ft. As I understand it, that is the effective head.

Redirect Examination.

(By Mr. POST.)

By the depreciated cost of reproduction I mean the cost of reproduction to put that plant into the original value and then depreciating that for its life for the length of time it is in service, taking away a certain percentage of its original cost to get this present value. My estimate of the value of that plant based upon cost of reproduction is \$1,019,342.75, which I consider the present physical value of the plant. To this I add the cost of the land, \$109,272.44, making a total of \$926,675.23. To this I add an arbitrary amount of 10 per cent of what is commonly known as the going value, which amounts to \$92,667.52, making a total of \$1,019,342.75.

Recross-examination.

(By Mr. ELDER.)

I stated I added a rate of 10 per cent for a going

(Testimony of A. J. Wiley.)

concern. I would imagine that all kinds of businesses are not allowed the same rate as a going concern. It is generally considered that there is some sort of intangible value that is allowed usually for the fact that you are connected up, ready to do business. It isn't simply a plant completed and standing idle, but is all connected up ready to do business, and there is a general feeling that there ought to be some allowance made for that, and 10 per cent, is the usual allowance. It might be 15, it might be 5 per cent, but I just simply make it 10 per cent. I am unable to answer your question whether or not 10 per cent of some concern would not be anyways near sufficient. I am quite familiar with Foster, but I have never noticed that in his writing. I did not [442—158] figure any depreciation in the value of the real estate. I figured its original cost. I did not consider the horse-power delivered to Mr. Strathern. With regard to my estimates based upon capitalization of net income, I took about \$164,000 as the average for three years. Supposing that the records should show the income for 1908 was \$200,000, in 1909, \$164,000, in 1910, \$128,000, making an average of \$164,000 for the 3 years, I wouldn't consider the plant worth as much. Supposing it was the other way, that in 1908 it was \$128,000, in 1909, \$164,000, in 1910, \$200,000. If I had reason for believing that the ratio was going to continue to increase, I would consider it worth more. Supposing I had reason to believe it would stay up to the maximum of those three years; it would then be worth more. In other

(Testimony of A. J. Wiley.)

words, it is not only what the net income has been for the 3 years, but what it is likely to be for the succeeding years. Where we are capitalizing the net income that way, my basis of calculation really is the probably average income for a long period of years in the future. All of the elements, whether the income is rising or falling or fluctuating, are to be considered.

Redirect Examination.

(By Mr. POST.)

I take into consideration the outlook for business, that is, part of it; the character of the business being done, the character of the customers, whether the business is liable to play out or continue; and also take into consideration the probability of competition in the particular neighborhood where the business is being done. In this case I took into consideration the character of the business as being largely mining, and the probability of competition. In that connection I would think the business is very likely to decrease. This plant in connection with other plants of the company, I think, would probably keep up its earnings, but from my experience in [443—159] mining districts I have very grave doubts whether the present earnings of this plant would keep up. I know nothing about the Coeur d'Alene district. I know other mining districts which have been supplied by electrical power plants, in which the earnings have ceased entirely within a period of 10 years, and the lines have been abandoned. My first estimate was simply a mathematical calculation from the

(Testimony of A. J. Wiley.)

figures given. I assume that the Coeur d'Alene were going to be the same as they are now, the same as they have been for the last 3 years. I do not think I should take the income of the last year, because that might be simply accidental; there might be some reason for an increase or decrease. I think you should take a period of at least 3 years so as to get an average. It would not be fair to take the first 3 years of a new business, but this is an established business, and really there is not a very great deal of difference in those years. I think the average increase is carried forward.

[Testimony of C. F. Uhden, for Defendants.]

C. F. UHDEN, called as a witness on the part of defendants, on

Direct Examination.

(By Mr. ELDER.)

I cannot state the increase in power by horse-power which the company is enabled to generate at their Spokane plant by reason of the bear-trap dam and reservoir which is created at Lake Coeur d'Alene. I cannot get it from the records here, but can from Spokane. That is, I will say that I can get it approximately—approximately the area of the lake is somewhere in the neighborhood of 40 and 45 square miles; whether that would include the overflow land or not, I could not say. The bear-trap dam will raise 10 feet above the crest of the dam. I cannot tell you how many horse-power can be generated at Spokane without the lake storage at the lower storage of the water, for the simple reason that my work with the

(Testimony of C. F. Uhden.)

company has been only construction of new plants. This plant was built [444—160] before I started to work for the company. I can give you the increase in horse-power we are enabled to generate at the Little Falls plant by reason of this lake storage. That would depend upon the amount of storage in the lake. I can't give you that offhand, but will get it for you.

(Witness temporarily excused.)

[Testimony of Fred E. Wonnacott, for Defendants.]

FRED E. WONNACOTT was called as a witness on part of defendants, and being duly sworn, on direct examination by Mr. ELDER, testified as follows:

My name is Fred E. Wonnacott. I am assessor of Kootenai County, Idaho, and have held that position since January 9, 1911. I came to Kootenai County in 1882 and have lived here more or less ever since. I have resided at Rathdrum and in Coeur d'Alene City. I have been familiar with the power site at Post Falls for probably 30 years. The property of the Washington Water Power Company that I assessed in 1911, giving the value of each item as assessed, and giving my reasons for placing the values which I placed upon the property, see page 11, book 1 of deeds, 274,394 acres of power site, including the lands under the river, assessed at \$1,080,000. I assessed it because I thought it was worth the price I assessed it at. I assessed it at the same ratio I did other property in Kootenai County. I obtained all the infor-

(Testimony of Fred E. Wonnacott.)

mation I could in regard to the property, and I assessed it for what I thought it was worth. I assessed the property which they purchased from the Cable Milling Company at \$40,000. I assessed the property they bought from Mr. Strathern at \$50,000. The two items, one from Strathern at \$50,000 and one from Mr. and Mrs. Martin for \$25,000 makes up the item of \$75,000. I arrived at those figures because there were 250 horse-power sold to the plant for \$40,000, and I based the assessment of the Strathern property and the Martin property on the same basis. There were 250 horse-power delivered to Mr. Strathern free on the line for his holdings and there was 125 horse-power delivered to Mr. [445—161] Martin for his holdings, and I assessed it on the same basis as I did the Cable Milling Company property for which they paid \$40,000. In assessing the power site I considered the storage value of that site. I assessed it on an acreage basis, 270 acres at \$4,000 an acre. I got my information from various sources. I first asked the plaintiff for a statement of their holdings at Post Falls for assessment purposes. They sent me a statement of their property, or statement of part of their property, almost a verbatim copy of 1910 list, but it wasn't sworn to or verified except the items were almost the same as they were in 1910. Then I went down to the recorder's office, and as the descriptions given on the statement referred to the pages and books of the records of Kootenai County, I verified the list, verified the description of the property given, in order to find out just

(Testimony of Fred E. Wonnacott.)

exactly the property that they gave in. I assessed it just as they turned in the list, according to their descriptions. I have the list right here. There were one or two items not on the list. I added those. There were 23 miles of pole line, or 25 miles of pole line, the way I have it assessed, Pend O'Reille pole line, wasn't on their list and I added that, also added 839.69 acres of easements for their pole line, which they didn't give in, and one or two minor items here, and then I obtained all the information I could get in regard to those things and assessed them. I did not close the assessment of the company's plant until the 30th of June, 1911, the very last day there was for me to close up the books. I visited the plant several times for the purpose of inspecting it. I did not get into the plant. I was really refused admittance to the plant. The day that I took some deputy assessors down with me to make some calculations, we called at the office, or plant, and the man in charge informed us that it was against the rules of the company to allow anybody to go in, and we asked him to call up the office or person in charge and ask him if we couldn't go [446—162] through the plant, and he went to the telephone, called up somebody and then returned and told us that the instructions were that we could not go through. I had Mr. Tinkle, president of the First National Bank of Coeur d'Alene, with me. He is not an engineer, but he has had some experience in power plants and has owned some interest in power lands. I took him there for the purpose of getting his opinion. I took Mr.

(Testimony of Fred E. Wannacott.)

Thompson and Mr. Wolfe, who was a clerk in the bank at that time. Mr. Thompson was a deputy at that time and was familiar with the books of that office and with the Washington Water Power Company in 1910. I made one trip just alone; went over the railroad track and spur which was itemized on their list here, railroad spur and bridge. There were rails and the track there. I don't know just the dates I was there, but was there between the second Monday in January and May or June, 1911. I was there alone and went over this entire track at this time with the view of getting information regarding it. I estimated the length of the bridge. There is a bridge about 115 or 125 feet long and there is another bridge across the Corbin ditch. There is a wagon bridge also owned by the company, and all three bridges and the railroad spur were assessed under the head of railroad spur and bridge. I noticed quite a good deal of rock work down along the right of way, and the railway spur was ballasted. The bridges looked to be like permanent structures; they had concrete abutments underneath in the bed of the river, blasted out of the rock in each end of the bridge, and they looked like permanent structures, although it didn't seem to me that any trains or any cars had run over the track for some time. It didn't look as if there was any traffic or travel over the road. I sent others down there. I sent Mr. Butcher, who was my deputy in the office, to make examination of the buildings and structures. Butcher was a builder and contractor. He built the Swedish College [447—163]

(Testimony of Fred E. Wonnacott.)

down here under contract, and he has been in my office for the last year. I sent John Snyder, who lives on the Coeur d'Alene River, down. He has had some experience as an electrical engineer and I took him down to examine the machinery. I went through a great deal of investigation, hunted up all the records I could find, hunted the court records, and I found a great deal of testimony and the testimony of Mr. MacCalla in the Waters' case, which was tried in the District Court here. I read the testimony to Mr. MacCalla in regard to the plant at Post Falls, which bore on the capacity of the plant and the value of the lake as a reservoir, the increase in the capacity of it. I found Mr. MacCalla's testimony in the office when I went in and read a great deal. I read a good deal of testimony in those cases and a great deal of the information I got was obtained from the records in that way. Thereupon put pages 235 to 249 of the record in the case of the Washington Water Power Company vs. Waters, District Court Kootenai County, Idaho, and the record of appeal was introduced and received in evidence.

WITNESS.—I talked with a great many people about the plant at Post Falls, talked with everybody I could meet that knew anything about the plant, talked with residents of Post Falls, talked with Mr. Strathern. I also talked with Mr. Martin, Mr. Martin who had a deal with the Washington Water Power Company, was one of the owners of part of the power plant there, and an old resident there; talked with Mr. Endere, talked with Mr. Tom Rus-

(Testimony of Fred E. Wannacott.)

sell, who was one of my deputies down there at Post Falls.

I consider statements and books published by the company. I consider the financial statement which has been identified by the evidence here; I consider the circulars they sent out in regard to the plant at Post Falls, and their other plants. There was a great many things that I went into [448—164] before I made—as I say, I didn't close up this assessment until the very last day, until I was compelled to close it, on the 30th day of June, 1911, was when I finished up this,—I tried to get some information from the company. No—I telephoned in to the company, I think, more than once—I was told that Mr. Bleecker was in California, and he couldn't be here. I didn't get any information from the company at all as regards—that is, as I remember of—in regard to the cost of the improvements down there at all. I gave them every—I waited until the very last day, thinking that someone might come and talk the matter over and try and arrive at a close valuation, especially on the improvements down there. I didn't think we could possibly agree on the power site, but I did think we ought to be able to get pretty close together on the improvements, but there wasn't anybody came up and I had to close up this business on the 30th day of June, and I closed it up. Afterwards Mr. Bleecker came back from California, came into the office, and wanted to know what the figures were, and I gave them to him, just as I have them here, and he laughed at me and made a good deal of fun

(Testimony of Fred E. Wonnacott.)

about it, and seemed in a good humour about it, but, of course, they went before the Board and filed their objections, and I appeared and answered as well as I could.

Mr. Bleecker, to my knowledge, did not come to my office with Mr. Gray before the assessment was made. He did not ever see me in my office in the presence of Mr. Gray before that assessment was made. Mr. Gray introduced me to Mr. Bleecker after the assessment was made. The assessment was made on the 30th day of June. Mr. Gray did not, in my office or at any place in the presence of Mr. Bleecker, in June, 1911, after the 7th of June and before the assessment was made, tell me that I could go to Spokane and examine the books of the company—not until after this assessment was made. I am sure [449—165] it was when Mr. Bleecker was in the office, and Mr. Gray, after the assessment was made,—some time in July, introduced me to Mr. Bleecker and Mr. Bleecker and I talked this matter over before the Board of Equalization here this year, and he admitted that the figures were made before he ever met me. I think it is a mistake, that is, all in regard to that testimony of Mr. Gray. I think he made a mistake. I do not say he misrepresented anything in his testimony, but I think he is mistaken. I am sure he is, because this assessment was made on June 30th, 1911. I had to close my books at that time. Mr. Bleecker was in California prior to that time and I never got to see him at all and never knew him until that date. I think I had a talk with the employees of

(Testimony of Fred E. Wannacott.)

the company in regard to this plant. There was a man come up here at one time; he didn't have full authority to act in the matter. I didn't have any conversation with anyone else employed by the company before the first of July. I think he came up during the last days. He didn't have any authority to do anything. He told me Mr. Bleecker was away, and there was nothing he could do.

Thereupon the Court admitted in evidence pages 2 and 3 of prospectus, marked exhibit No. 1, for identification.

WITNESS (Continued).—I assessed the other property in Kootenai County at its full value as near as I can. [450—166]

On cross-examination by Mr. POST, witness continued: I had 10 or 12 deputies assisting during the period between the second Monday in January and the first of July. I did not, in order to keep posted in regard to the values, in Kootenai County, keep track of sales as they appeared of record in the Auditor's office. We probably paid some attention to the prices property sold for during the year, but did not run down the records to find it, we did not pay much attention to the mortgages that were given; I didn't look that matter up. I don't think it is customary to give mortgages to mortgage companies for more than the value of the real estate in this county. I never looked up to see whether every real estate mortgage that was given during the year 1910 was in excess of the assessed valuation that you put upon that property. I don't know anything about the

(Testimony of Fred E. Wonnacott.)

rule in Kootenai County as to mortgaged property, that the mortgage is not to exceed 40 or 50 per cent of its value. I know nothing about that. I did not get the figures, \$562,500, at which I assessed the bear-trap dam and small dam, from anybody. I made those figures up myself. I took into the consideration that the bear-trap dam was a part of the reservoir, and did not assess the bear-trap dam at \$562,500, on the theory that they cost that much to construct, but principally on account of the company ownership of property there at Post Falls, and the reservoir site. I tried to get at the figure those dams cost to build and what they would cost to rebuild. I made the figures it would cost to rebuild myself. I did not exactly guess at it. I never could get the dimensions of that dam from the company. After a good deal of persuasion I got the dimensions of the lower dam, but I never did get the [451—167] dimensions of the upper works. I think I got the dimensions of the lower dam from Mr. Uhden and Mr. Steele. I got that this year; I did not get it before January 1st, 1911, or before June 30th, 1911. When I made the figure \$562,500, I figured the upper dam there, the bear-trap, was about 115 feet on one angle, and about 225 feet on the other, and about 340 feet in length. I did not get any engineer or anyone to help me figure those dams. I did it myself.

Before I became assessor I was in the mercantile and real estate business; I never was an engineer, or claimed to be; I never had any experience in building

(Testimony of Fred E. Wannacott.)

dams or similar structures. I failed to state in my original statement that I tried to get the County Commissioners of the County to employ an engineer to go down there and make a thorough examination of the Post Falls Plant early in the season of 1911. They seemed inclined to do it, but they put it off so long it just left it up to me to go ahead and do the work; that was all there was to it. I went down there and used my best judgment on it. I figured this way, that that dam there, while it might not have cost exactly \$562,500 to build it, it is a big structure, larger than the other one below; it is a great big concrete proposition there, and they had people working there for over a year on that proposition there, and it looked to me like a bigger proposition than the lower one. That the company is a big company did not enter into my figuring; I figured the lower dam would cost \$200,000, but I assessed it at \$150,000. In figuring out that cost I could get around on the outside and look at it and examine it closer than the other; that is all, estimated its length, width and [452—168] depth. I made an estimate in my mind what that would cost. I am not supposed, when I assess a brick building, to go in and count the bricks in the building; then I made the bear-trap dam there at \$562,500, because it looked to me to be a great deal bigger proposition, and the further fact that I considered, that they controlled the water. I just remembered that last item. I didn't consider the buildings down the river so much as I did the storage capacity up the river. I just put in the cost of the

(Testimony of Fred E. Wonnacott.)

dam and the storage value as a whole. I did not make any segregation of it. I assessed machinery at \$350,000; I saw part of it. I took Mr. Tinkle with me down there. He saw the machinery and so did I. We looked it over. I think that was in May or June, 1911. We did not get in the building, that is, Mr. Tinkle didn't, but I got in afterwards. Mr. Tinkle looked in the windows and followed around the building on the outside and we could see in from the outside part of the machinery. We got a pretty good idea of the machinery that was inside. I think it was in 1911, when I got in that part of the power-house where the machinery was. I think it was in April, May or June. There was no one with me. I do not know the man's name in the power-house when I went in. I walked down the railroad track; I started from the Northern Pacific track and followed the track down to the lower power-house, and the door was opened and I walked up to the door. I didn't attempt to walk through the door, because I knew the rule of the company that no one was allowed; I didn't think about it being dangerous, because I was not afraid of it. Besides Mr. Tinkle there was never anyone else went down with me through the plant, nobody from the assessor's office.

[453—169]

I put the valuation of \$350,000 on the machinery. I based that on conversations and inquiries that I had made in regard to that class of material and that class of machinery, and from some things Mr. Tinkle said, and from things George Harding told me in

(Testimony of Fred E. Wannacott.)

regard to machinery of that character, and I think I had some cost sheets some place. My mind was not influenced in any way in fixing the valuation upon this machinery from this book that has been introduced in evidence, Defendant's Exhibit 1, pages 1 and 2, and this financial statement, nor was my mind influenced in fixing the value on either one of these dams by Defendant's Exhibits 1 or 2. The part of this assessment that I made I placed the valuation on because of these statements was particularly the power sites, that is, the assessment of \$1,080,000. The statement in there that affected my mind in assessing that 270 acres of land at \$1,080,000 was the water-power plant at Post Falls, 24 miles east of Spokane, with a present development of 15,000 electric horse-power. In connection with that there was the financial statement there, and this statement, "All these water-power plants are on the Spokane River and their stability is assured by the natural reservoir of Lake Coeur d'Alene, which has an area of 45 square miles, and is situated on the Spokane river 34 miles above Spokane."

I was not trying to assess the property of the company because of the natural reservoir of Lake Coeur d'Alene; in addition to that they had a right to condemn lands up there, that land was put out of use. I was assessing them for the value of the storage capacity. That is, in figuring this at \$4,000 an acre for the 270 acres at Post Falls, [454—170] I was partly assessing for the value of Lake Coeur d'Alene as a reservoir and I assessed them for the site at

(Testimony of Fred E. Wonnacott.)

Post Falls. They had the right of condemnation of these lands. They condemn the lands on the river that are taken out of the taxable property of the county, and they destroy values there, and it seems to me that they should be willing to pay for it. I assessed their lands at Post Falls for the items I have just mentioned \$1,080,000. I assessed it at \$4,000 an acre for the destruction of the property up the river. I assessed them on the plant at Post Falls as a reservoir site, and of course, took into consideration the overflow.

(Thereupon Defendant's Exhibit 2 was received in evidence.)

Direct Examination.

(By Mr. ELDER.)

(Witness continued:) No valuation was placed upon that substation at Cataldo for the year 1911, it was not reported in that statement for 1911.

Cross-examination.

(By Mr. POST.)

(Witness continued:) In assessing the lands, dams, buildings and machinery in 1911 I was not influenced in any manner by the fact that County Commissioner Ferguson had some land on one of these rivers that flow into Lake Coeur d'Alene, and claimed that he was being oppressed and injured and damaged by the Washington Water Power Company, and that he had sued them for \$8,000 or \$10,000. Nor was I influenced by the fact that this company had a considerable amount of litigation with settlers on these rivers. It was nominated under the

(Testimony of Fred E. Wannacott.)

direct primary law. I didn't take into consideration at all whether if I assessed this alien corporation, the Washington Water Power Company, at a very high figure it would in any way [455—171] be unpopular in this county, or injurious to me. I did not consider that the part in that report dated December 31st, 1910, that influenced me in assessing the items I referred to was the dividends paid by the company one item. I took into consideration in connection with this statement here, that the Washington Water Power Company had a plant at Post Falls and a plant at Spokane that was creating this large amount of revenue. The principal amount of revenue, it seemed to me, came largely from these 2 plants, for the reason that the plant at Little Falls was not completed until about the 1st of September, 1910. The statement shows the gross receipts of the company and the operation expenses, and dividends paid. I do not know how to figure anything but the gross earnings and dividends paid on the gross earnings. In making the assessment I was aware that the company had a street railway system in Spokane and an interurban street railway line to Medical Lake. I looked up somewhat that it owned a large amount of real estate in Spokane. I am not positive about it having an electric light system very complete in the City of Spokane, that lighted the city and furnished light to the inhabitants. I was aware that it had a transmission line running west almost to the Columbia River, which furnished light and power for that great section known as the Big Bend

(Testimony of Fred E. Wonnacott.)

country. I did not know particularly about it having a transmission line down into the Palouse country.

In connection with the assessment on machinery I didn't take into consideration the amount of dividends paid as affecting its value, nor the value of the machinery. I did not take that into consideration in valuing the buildings, nor the concrete foundation and dam item I have here of \$150,000, [456—172] nor in valuing the bear-trap dam and small dam, I have assessed at \$562,500. I did take that into consideration in valuing the real estate, the 270 acres. In valuing the 270 acres at Post Falls I tried to take into consideration the whole system of the company in Idaho, the amount of business it was doing and its general earnings. I tried to get an estimate of what I thought was the Idaho proposition of it earned by the plant at Post Falls; in a general way, I tried to figure out what per cent of gross earnings I could charge up to Idaho, and credit to Idaho. I thought about a third of the system, one-third of their property was at least in Idaho, for their power plant, and that one-third of the value of the power plant was in Idaho, the earning plants. This statement showed that they earned 7 per cent dividends right along. If the statement shows anything about what they earned from the street railway system. (Witness shown paper.) It shows in here what they earned from the street railway system; it just shows the gross receipts and expenses, it does not segregate those items there, it

(Testimony of Fred E. Wannacott.)

does not show either the gross receipts or the net earnings from the electric system. I did not take from either the gross receipts or the net earnings of this street railway system in making my calculations, except in a general way. I figured that the power plants were the primary producers of this enormous revenue, and I just took it in connection with my assessments in a general way. I did not go into exact figures on those things. I did not subtract from the entire investment, or subtract from the gross receipts or net receipts any items on account of the street railway. I figured that the Post Falls plant and Spokane plant produced [457—173] the revenue, I should think. I took one-third of the entire revenues of the company as being produced by the Post Falls plant. I cannot state what my calculations were. I did not capitalize that amount at some rate of interest. I don't remember what the amount was I figured for net revenue. I figured what the entire value of the property in the State of Idaho was; it was over three million dollars. I figured the entire value of the property in Kootenai County at over three million dollars. I should say the value of the property was over $3\frac{1}{2}$ million dollars, but I was afraid to assess it at $3\frac{1}{2}$ million. I wanted to get within the value. I figured that the outstanding bonds at that time were in round numbers about \$5,000,000; the capital stock outstanding was somewhere between \$12,000,000 and \$13,000,000, according to the statement I had seen; that is, about \$18,000,000 entire, and I figured that

(Testimony of Fred E. Wonnacott.)

the Washington Water Power Company had invested at least that amount of money. I did not take any per cent of it to get at the value of the Idaho property, but I thought by those figures that this plant at Post Falls was worth, in my judgment, 31½ million dollars. I did not use any percentage of the value of the entire property in order to get at this property in Kootenai County and did not subtract from this \$18,000,000 the value of this street railway system. I did not know exactly the value of that.

I took into consideration in making the assessment of the property what the property would sell for, and my opinion on that was based purely on my own knowledge and information from these reports. I do not remember that there was anything in Mr. MacCalla's testimony, referred to here, that influenced [458—174] me with regard to the valuation of the machinery. I do not know whether any part of his testimony influenced me in figuring the value of these dams, but part of his testimony influenced me in figuring the value of the 270 acres. Some place here he tells about the development of 15,000 horse-power. I read the item that influenced me in regard to the horse-power developed at Post Falls. I haven't found the item that says they developed 15,000 horse-power at Post Falls. I don't find that statement in his testimony. That statement did not affect me in fixing the value of the lower dams as a physical improvement. It perhaps had a little to do with fixing the value of the bear-trap dam, but

(Testimony of Fred E. Wannacott.)

not the others. I think it influenced me in fixing the value of the bear-trap dam, the amount of electric horse-power that I thought was produced at that point. I have been led to believe that that bear-trap dam cost a large amount of money. If I had known anything about the electric horse-power produced at the power-house I would have assessed that dam for what I thought it was worth, and that is what I thought it was worth. I do not mean to say I thought it cost that amount of money to construct. I don't believe it would cost more than half of that to construct that upper dam they call the bear-trap. The other half I put in because of the additional horse-power that would be produced by reason of the dam. I mean because of the flowage and storage in the Lake and in the St. Joe and Coeur d'Alene Rivers. I assessed the easements and rights of the company on those rivers at \$172,000, I think, and in my assessment I added double to the value of the dams, partly because of these storage rights, and partly because of [459—175] the value of the real estate. I assessed 270 acres of land at \$4,000 an acre. I thought it was worth it on account of the value of the site; it was the key to the whole proposition there; it was the point at which these dams could be built to store the water; it increased the value of the holdings of the Washington Water Power Company in developing the large amount of power in the State of Idaho and also in the State of Washington; it increased the value of the Post Falls property. I couldn't estimate how much. I figured on it increasing the

(Testimony of Fred E. Wonnacott.)

value of the rest of the property of the company, it is so great. I believe it is a great deal more than a million dollars.

If the Post Falls plant had not belonged to the Washington Water Power Company, but had belonged to the Post Falls Water Company, and that company had had no property down the river at all, I would have assessed it at \$4,000 an acre, because I think it would increase the value. It increased the value of its property at Post Falls; that is where the value goes into that property there.

I answer your question as to how I estimated that the Post Falls plant, owned by a separate company would have its value increased, by the fact that the mills and manufactories down the river would get some benefit out of this storage, by stating that they control the water there, and if they don't let the water through they could hold it there, and they could do them damage down there; they could make them pay them for it. It is my idea that the company or person that owned the Post Falls plant could do some damage to the people down the river by shutting the dam and levy tribute on them, if they control the water, and I believe they control the water. I [460—176] considered it would be in their power to levy tribute on the mills and manufactories down the river. I think they would have the right and the power to do it, it would be valuable. If the company studied their own interest they would not shut the water off at Post Falls; they would have to let the water go through in order to

(Testimony of Fred E. Wannacott.)

operate the plant, and give power and light to its customers. In figuring the value of the plant at \$4,000 an acre, I didn't figure as to the annual tribute that this plant might levy on the mills and manufactories down the river. I figured what would be the salable value of this property to a person that wanted to buy from the Washington Water Power Company if it wanted to sell what a person would be willing to pay for it, and figured that at \$4,000 an acre. I figured that price because of the two factors,—one, its earning power, operated as a hydro-electric plant; another, its earning power because it could levy tribute on mills and manufactories down the river, and because of the other factors; that because of the site and the right to overflow the lands it increased the actual value of the plant and lands at Post Falls, regardless of any other. I did not take this tribute that they could levy very much into consideration. I figured it would be worth \$4,000 an acre as a separate entity, without regard to the benefit it would be to the people down the river. It is at least worth that, in my opinion. I based that opinion on the amount of power they could generate at Post Falls, 15,000 horse-power. I never bought or sold any water-power sites. I never knew of any except this one of the plaintiff being bought. I am not sure what they paid for it, but I [461—177] think it was between \$80,000 and \$100,000.

I go down to Spokane about once every six months. I was in Spokane perhaps once or twice in the early part of the year 1911. I don't believe I went to the company's office. I think I telephoned

(Testimony of Fred E. Wonnacott.)

to the office the fore part of the year 1911. I don't know the name of the party I talked with. I called for the manager, or somebody in authority down there. I can't say just what month that was I got this Defendant's Exhibit 1; in the early part of 1911. I got this financial statement, Exhibit 2, about the same time. I have been reading up on it a good deal; in this instrument marked Exhibit 1, it is stated who the officers of the company are. I don't think I asked for Mr. Harding, the president, over the telephone. I don't think I asked for Henry M. Richards over the telephone. That instrument states that Mr. Harding is president, Mr. Richards chairman of the executive committee; Mr. Bleecker second vice-president. I am not sure, but I believe I asked for Mr. Bleecker. I think they told me he was in California. I asked them to send somebody over here. I don't know who it was I talked with. I did not talk with the girl at the telephone office; I think I talked with somebody—I asked for somebody in authority. I don't think it was a female voice at the other end of the line; I do not know whether I asked for Mr. MacCalla, the general manager, or not. I didn't ask the girl to give me somebody in authority. I do not know who it was with whom I talked. I do not remember whether I had any conversation over the telephone more than once. I requested a statement showing the cost of these dams and I do not know whether it was over the phone or whether it was my mail, but I requested [462—178] that statement and they sent me that

(Testimony of Fred E. Wonnacott.)

statement, but it was not sworn to. I think the statement is here; it is in evidence. After getting the statement I think I had some little conversation with a gentleman that they sent up from the office with relation to this statement. I am not sure whether his name was Turstad—I think it was. As I understood it, he was a tax clerk, but he had no authority whatever, and he didn't know anything about the business either. I did not ask anybody connected with the Washington Water Power Company to furnish me a statement of the cost of this machinery, for the reason that they didn't have anybody that knew anything about that. I didn't ask any officer of the company for the privilege of going through their books and papers at Spokane to find out the cost of any of these things, or the earnings of the Post Falls plant. The officials of the company were in Spokane and I went down to the plant and asked permission of a young man there to go through the buildings, but I didn't telephone the company at Spokane and ask anybody there, and didn't call up an officer of the Washington Water Power Company, or tell them that I wanted to go through the plant, or ask for permission to do it. All that I did, on one day I went down to Post Falls and one of the employees told me that he was instructed not to allow anybody to go through the plant, and he wouldn't do it, and I asked him to call up the company's office to inquire about it. I didn't call up the company's office to inquire about it, it got too late; it was quite late in the season. I

(Testimony of Fred E. Wonnacott.)

went down to the Post Falls plant the last week in June. I believe this young man I talked to at the plant was named Enders, but I am not very well acquainted with him. I didn't get his name. I told him who I was. [463—179]

On redirect examination by Mr. ELDER, witness continued:

In making this 1911 assessment I talked with Mr. Smith, the assessor of the prior year, in regard to this property. Mr. Smith told me that in 1910 they were assessing the property in Kootenai county on the basis of 30 to 33 $\frac{1}{3}$ per cent of its value, and that Mr. Bleecker and he had agreed on the value of \$995,000 for the Post Falls property and the pole lines of the company. He told me that that was 30 or 33 per cent of the value.

Whereupon, plaintiff moved to strike out all of the testimony of the witness on redirect examination, which motion was denied, and to which ruling plaintiff excepted.

On recross-examination by Mr. POST, witness continued:

This conversation with Smith was early in the spring of 1911. I knew at that time that the company claimed that that assessment, whatever it was, was too high, and refused to pay taxes on that assessment.

[Testimony of C. L. Cory, for Defendants (Recalled—Cross-examination).]

C. L. CORY was called to the stand and on cross-examination continued:

The detail of this statement is complete and exactly corresponds with my testimony of yesterday, with this single exception: In attempting to determine the value of the Post Falls plant upon an earning basis in my testimony of yesterday I assumed that the cost of the property in Idaho, outside of the Post Falls plant, was for the flowage lands \$175,581. That, from [464—180] the testimony of Mr. Wonnacott, was modified to \$175,581. There is also the two figures given upon the assumption that the transmission lines in Shoshone county are taken at their depreciated value and also at their estimated cost, both figures being given. The one figure was not given yesterday. In every other respect it is exactly as given.

[Testimony of J. W. Smith, for Defendants.]

J. W. SMITH was called to the stand as a witness on the part of the defendants, and being sworn, on direct examination by Mr. ELDER, testified as follows:

My name is J. W. Smith; reside at Rathdrum, Idaho. I was assessor and tax collector of this county in the year 1910; was assessor and tax collector two years; prior to that time I was deputy two years; and have had four year's service as tax collector. I am acquainted with Mr. Bleecker, Second Vice-President of the plaintiff company, he

(Testimony of J. W. Smith.)

gave me the assessment of the property of the company, a list of the property for assessment, in 1910. As near as we could get at it the property was assessed in this county that year at about thirty per cent. He gave me a statement of the value for assessment purposes, but not in writing. Mr. Thompson and Mr. Wolf heard the conversation. Mr. Bleecker told me that they were willing to have the property assessed for any sum not to touch a million dollars but the company wouldn't stand for an assessment of a million dollars.

We had quite a conversation. I said to Mr. Bleecker that the property should be assessed for \$1,200,000. Mr. Bleecker said no, that was too much, the company wouldn't stand for that. They would be satisfied to stand for anything below a million dollars. I asked Mr. Bleecker if they would pass the Board of Equalization if I [465—181] assessed the property at \$995,000, and he said they would and would pay the taxes without a fight, and that was the way the assessment was made, on that condition.

(Witness temporarily excused.)

[Testimony of Walter H. Graves, for Defendants.]

WALTER H. GRAVES was called as a witness for the defendants and on direct examination by Mr. ELDER testified:

My name is Walter H. Graves; I reside at Portland, Oregon; I am a civil engineer and hydraulic engineer; have been engaged in the profession forty-odd years.

(Testimony of Walter H. Graves.)

I was born in Illinois, lived in a section of the country where there was a great deal of draining work done, and in quite early life I began to run drainage lines. I did that while I was attending school; earned enough money at that business, drainage engineering, to send me through college. I graduated from the Illinois University, and got a diploma or a degree of Bachelor of Science. I subsequently took a post-graduate course, and got a degree of Bachelor of Arts. Subsequent to that, by some special work that I did and a thesis that I prepared, I got a degree of Master of Arts. I got a number of other degrees. They are written in Latin. I don't know that I could translate them now, to find out just what they do signify, because I have forgotten. I attended college in Canada for a year or two, at Jaques Cartier College, and at Saint Hyacinth College. After leaving college I was appointed in the government engineering service and went to work for the government.

At that time I worked for about eight years, [466—182] serving in various departments and in various ways throughout the country, and some other countries. I left the Government service and went out west, came out west, and went into railroad work, subsequently into some mining work; then I took up irrigation—followed that a while. Then I was employed by the Travelers Insurance Company of Hartford, Connecticut, and their associate investors, as consulting engineer and construction engineer. I worked for those people for

(Testimony of Walter H. Graves.)

about 10 years, between 9 and 10. During that time I worked all over the United States, as an advisory engineer and constructive engineer. They were handling a great many securities, on all sorts of plants, and my business was to report upon those plants and the value of the securities.

I took charge of the construction of the plants ranging all the way from municipal water supply plants and electric light plants, and railroads, and coal. I put in the Pasco pumping plant about two or three years ago, designed it, constructed it. * It cost about \$400,000. That was for some Spokane capitalists. I was employed by the same people to go and report on the Hanford Power project over on Priest Rapids. I made a survey for the Priest River power project for the same people, drew up the plans and details for their power plants, 162,000 horse power; and I had a number of experiences of that kind.

I read the principal engineering magazines and principal works on engineering.

I have visited the plant of the Washington Water [467—183] Power Company at Post Falls several times. In my judgment I would think a reasonable depreciation would be one per cent.

(Witness temporarily excused.)

[Testimony of Earl Brown, for Defendants.]

EARL BROWN was called as a witness for the defendants, and being duly sworn, testified, on

Direct Examination.

(By Mr. WERNETTE.)

My name is Earl Brown; residence, Coeur d'Alene, Idaho; occupation, assistant vice-president of the Coeur d'Alene Bank & Trust Company; have been interested in the banking business seven years, in Washington and Idaho. I should think the going rate of interest, depending upon the security, on large sums of money, as from a quarter of a million to over a million dollars would be about five to seven per cent, depending upon the proposition; the better the security, the lower the rate; the surer, the lower the rate. If there is a chance in the investment, that would be its effect. It is seldom they would be required to sell them at a higher rate, because people want a higher rate for taking chances.

Cross-examination.

(By Mr. GRAY.)

I have never had any experience in floating any large loans. The going rate of interest in Kootenai county will go from seven to twelve per cent in the banking business; possibly sometimes a little higher, sometimes a little lower. The average going rate of interest is from seven to ten per cent. We haven't any seven per cent loans in our bank; they [468—184] are from eight to ten per cent. I can borrow money at seven here. The rate depends on the size of the loan. The aver-

(Testimony of Earl Brown.)

age rate of interest on the loan of our bank is about nine per cent.

Redirect Examination.

(By Mr. WERNETTE.)

Those are short loans; practically all small amounts. A few thousand dollars, the maximum, down to very small amounts.

[Testimony of Walter H. Graves, for Defendants (Recalled).]

WALTER H. GRAVES, recalled on direct examination, by Mr. ELDER, continued:

I have constructed dams; I do not recall any special dams now, but I have built a great many, different kinds of dams, concrete, masonry and crib dams; I have been at it forty years; I have never built any great structure that cost forty million dollars, but I have built dams that cost quite a little money. I am close to 64 years old. I have had experience with preliminary surveys of hydro-electric plants; I have made a great many of them and a great many reports of them in this part of the country. I made one for Mr. Strahorn and his associates over on Priest River a year or so ago, involving an expenditure of three or four million dollars. I made an examination survey for the proposed dam on Snake River down near Pasco, at Five Mile Rapids, one up above Lewiston on Snake River, and some dams on the Wa-ha Irrigation project that cost three or four hundred thousand dollars.

If I were sent to examine a site for a hydro-

(Testimony of Walter H. Graves.)

electric [469—185] plant, the first thing I would take into consideration would be the character of the ground about the site, that would be the matter of first consideration. The next thing I would do would be to ascertain the discharge of the river; that is a very essential feature, to know the maximum discharge and the minimum discharge, especially the minimum discharge because upon the minimum discharge of the river depends the maximum power capacity of that plant. I would hunt up the records of the discharge of the river and the flow and precipitation over the drainage area, and all that sort of thing. After I had been satisfied on that and made up a tentative plan as to the idea of the plant, the next thing would be to examine the foundations of the dam, if a dam was contemplated, and a dam is generally contemplated in relation to a hydro-electric power plant. I would find out the foundations and see whether they would be proper or would sustain the dam I had in mind. When I was satisfied on those points I would commence to work up the details of the dam, to get the measurements, etc. and therefore the maximum capacity of the plant. After ascertaining that I would proceed to work out the plans of the plant, to utilize the maximum power to be gotten out of the site.

I would take into consideration a reservoir site. A reservoir on a stream is a prime factor. It so materially augments the capacity of the plant that, if a reservoir site is available, it sometimes determines the question whether a plant is advisable or

(Testimony of Walter H. Graves.)

otherwise; and very often if a reservoir site is not obtainable, then the [470—186] next question is, how feasible is it to build an artificial reservoir.

I would consider the market. I have been operating and living in this country for the last thirty years, off and on. I think I am well acquainted around Eastern Washington and Northern Idaho. I know the locality. I think I can form a very good opinion in regard to what the market for electricity in this community is. In my opinion, the market is exceedingly good, and with the prospect of increasing and becoming better for a long period, if not indefinitely.

In my opinion, the fact that a power plant or power site at Post Falls increases the horse-power of plants down the river from Post Falls adds value to the Post Falls site. The fact that the company is a going concern adds value to its plant.

In attempting to arrive at the valuation of the Post Falls plant in capitalizing the net income of the company, I think five or six per cent would be ample; if I were attempting to arrive at a capitalization I would take five per cent, in my judgment, as the rate to capitalize it on. Taking into consideration a reservoir here and the value which I say, in my opinion, is added to the Post Falls plant by reason of the benefit to the other plants, and assuming that the net income of the Post Falls plant is \$164,166.14, and the value of the transmission lines, substations, and so on, in Shoshone county, to be approximately \$262,000, and the assessed value of the easements and over-

(Testimony of Walter H. Graves.)

flow lands in Kootenai county to be approximately \$201,000, and the value of the pole lines in Kootenai county approximately \$183,000, figured at the rate of five per cent, [471—187] under those conditions, the value of this plant would be about \$2,636,616.55 on that capitalization.

Assuming that the output for the year 1910 of the Post Falls plant was 57 million kilowatt hours, and that the net earnings for that year or the average net earnings for three years was approximately \$164,000, and that the capacity of such plant is 15,000 horse-power the value of the plant would be \$2,850,000. I figured interest at the rate of ten per cent in capitalizing that.

On cross-examination by Mr. POST, witness continued:

I graduated from the Illinois Wesleyan University. The first dam I built was when I was a young man, along about 1870. I have built a number of dams for hydro-electric power plants. The first one I remember now was near Montevista, Colorado. I am quite sure that dam is there now. That was built about 1880. It was for the Montevista Electric Light and Power Company. I built it; I paid for a good deal of it. I was the principal stockholder in the company. It was a concrete dam; not of the same material as the dams at Post Falls. It was a rubble concrete dam, that is, concrete and boulders, cyclopean concrete they call it. It was practically like these dams at Post Falls. It was in height probably 30 or 40 feet. I don't remember now how much

(Testimony of Walter H. Graves.)

it cost. It cost me personally about ten or twelve thousand dollars, my share of it; that is what I lost in that proposition. It has been a very profitable plant, but I lost. I was the promoter.

I built a dam at Derango, Colorado, and one at [472—188] Silverton, Colorado, I can't tell you the names of the company. That was away back about 1880. I didn't promote that enterprise. I can't tell now how big a dam that was; it was probably 30 or 40 feet high; possibly a couple of hundred feet long. Probably cost 20 or 30 thousand dollars; I couldn't tell, it might have been 40 or 50 thousand dollars. I installed the dam, drew the design for it, specifications, and built it. We certainly did generate some electric power with it; I don't remember how much. It was a town of about two or three thousand people; I expect we had 12 or 15 hundred kilowatts when it was first put in. I finished it up a year or so after I began. I saw it about eight or ten years ago. It was a masonry dam.

I can't tell you the next dam I built; I built one at Silverton and built one down at a place near New Hickory, New Mexico. The character of the Silverton dam was approximately the same as the Derango dam. I think it cost a little more than 40 or 50 thousand dollars.

I built a dam up in Northern Montana; I built one on the Little Horn river. That was a brush dam, made of brush. It has been there for 20 years; it is there yet. I built one at Fort Belknap; that was a rock-filled dam; that was not a hydro-electric power

(Testimony of Walter H. Graves.)

plant, it was a straight pumping scheme for irrigation. It cost about \$175,000, the dam and pumping plant; I don't know what the dam cost; they were both together. That was somewhere along in the 90's, twenty years ago.

Right up in that neighborhood we built an irrigation dam, a storage dam; that was about forty miles out in [473—189] the mountains from that place. That was built of earth with a concrete core; that cost perhaps \$300,000, something like that. I built that for the Government. The name of the project is, the Fort Belknap Indian Reservation. I was superintendent of irrigation for the Government. I ceased as such in 1901. I worked for the Government for eleven years as engineering inspector, superintendent of irrigation. I don't know when I next saw this irrigation dam, it has been a number of years; I fancy ten or twelve years.

I couldn't tell you the next dam I built; I don't remember. I built a dam on the Gila river near Florence, Arizona. That dam was built for irrigation, pumping. It was built of crib, rock crib dam. I have forgotten the name of the reservation there. It is for an Indian reservation. Florence is the nearest place. I can't recall the name of the project; if I had a map I could tell you. That was some time in the '90's.

I put in a dam on the Grand River above Grand Junction, in Colorado. That was an irrigation project and rock-filled, crib dam, cost probably \$185,000 or \$200,000. I put in a dam over on the Klamath

(Testimony of Walter H. Graves.)

Indian reservation on Sprague river. That was a rock-filled dam, probably cost \$150,000, maybe more; I don't remember. I have never built a concrete dam just like the one in question in this case. I told you about one or two concrete dams I built. I have not built any one within the last ten years. I don't remember what one I built within the last fifteen years. I had charge of that kind of work and was tearing around the country. I quit the Government's service in 1901 and went into private [474—190] practice. I don't remember of building a dam since. I can't recall where I built a dam of similar character as the material in the Post Falls dams. Since I went into private practice I have built hydro-electric plants. I can't recall any just now; I can refresh my memory and tell you later. I know I have not built any in the last ten years. I am not refreshing my recollection now from something, I am reading a letter from my sweetheart. I have not bought or sold any hydro-electric plants within the last 25 years. I have acted as consulting engineer for hydro-electric plants for the last 25 years. I made a report on the Hanford irrigation scheme to somebody who didn't buy it. I believe the plant here at Clarkston was sold on my report. I can't say that was true, but I made a report. I don't remember when I made a report on the Clarkston hydro-electric plant, it was several years ago. I made the report to Mr. W. P. Hurlburt. I have given advice concerning hydro-electric plants built within the last 25 years; I recall one at Idaho Falls. I don't know

(Testimony of Walter H. Graves.)

that that is something W. P. Hurlburt had anything to do with. I made a report for some people that were interested in it, and it was afterwards built. I don't know; I wasn't there. I had nothing to do with the construction of it. I made a report to W. P. Hurlburt in respect to the Clarkston plant at his solicitation, for a man by the name of Clark, that came out from the east with him. I also did quite a bit of work in Idaho. I was in his employ for several years in irrigation work. I was on an irrigation system that involved hydro-electric [475—191] development, three power plants. I was consulting engineer in respect to Hurlburt's promotion schemes probably four or five years. I have seen many bear-trap gates or a number of them, not exactly like the device used at Post Falls; that particular shape of bear-trap gate is not always used. I don't recall now where I ever saw any other bear-trap gate but they are used over the country in a number of places. I don't recall where I ever saw one of them. I recall some place in Pennsylvania, somewhere on the Susquehanna river. The Engineer's Society went up there to see it, and I went with them. I don't remember how long ago that was; perhaps ten or fifteen years ago.

I didn't see a bear-trap gate something like this one at Post Falls on the Susquehanna river but it was a bear-trap dam. I certainly went there with some engineers to take a look at it and I took a look at this one at Post Falls. There is just a difference in the way the leaves are closed; the same general

(Testimony of Walter H. Graves.)

patterns and device. I have seen the tainter; those things depreciate. Besides the concrete that depreciates at Post Falls there would be the superstructure, the gate, and anything of that kind. The substructure doesn't depreciate very much. I don't remember how many tainter gates there in those dams. I don't remember how many tainter gates in the bear-trap dam. I think there are two gates, as I saw it. It has been several years since I saw it. I have been here on this case for several days. I didn't go down there Sunday and look at the dam. The last time I recollect that I saw the Post Falls property was about [476—192] three years ago. I can't remember definitely. I went down to Post Falls at the time I was up in this city as a witness against the Washington Water Power Company, at the time of having the overflow hearing before the Secretary of the Interior. This is not the first time that I have appeared as a witness against the company. I couldn't tell you when it was I visited the dam; sometime several years ago. I have been through the power house. I don't remember with whom I was; it was some of the engineers. I don't know who he was. I have been several times. Generally with some of the engineers, I don't know who. I can't give the name of anybody. The bunch of engineers that were with us at the time that you refer to and myself examined the dams. That is not the only time. I was there before that, when they were constructing it, and I have been there at least once since, and possibly twice, I don't remember. There

(Testimony of Walter H. Graves.)

are three dams; I don't remember how many gates there are. I can't tell you how many gates altogether there are in the dams. I haven't any way of charging my memory with that and can't tell you anything about it. I can't tell you the size of any of those gates. I fancy those bear-trap gates are about fifty feet in length, as I recall; I didn't measure them. There are quite a number of other gates besides bear-trap gates. I don't recall now approximately how many of them or how big they are or what they would cost. The depreciation would be larger upon those. Besides the gates there is quite a quantity of iron there, in relation to the gates, I don't remember of any iron there except in relation [477—193] to the gates. I could only give an idea of what proportion the cost or value of those items that depreciate is. I would say it was a small proportion; it was a lesser proportion. I didn't figure it out, any way. I figured that the concrete portion of the dam depreciates very slightly. I will tell you how I figured that depreciation. It has been customary among engineers for many years to figure masonry dams at about two and $21\frac{1}{2}$ per cent depreciation. That subject was recently discussed over at the Engineer's Society in Seattle in regard to the Anderson concrete dam and it was almost universally admitted that the depreciation of the Anderson dam would be less than one per cent. That was the consensus of opinion among the engineers. The concrete that forms a larger proportion of this dam will depreciate no more than the granite rock upon which it is built; there is a slight depreciation and wearing

(Testimony of Walter H. Graves.)

out of that rock; it takes many centuries for that rock to wear out. This concrete down at the bottom of that dam will probably be there several hundred years from now. And in a monolithic structure like that, unless some earthquake or something like that happens, is practically indefinite. The depreciation occurs on the superstructure. The concrete tied into the solid rock is as enduring as the rock itself, generally, and engineers so regard it. I would figure the depreciation at some figure, one per cent or a fraction of one per cent; it would depend on whom I was figuring it for, whether for a buyer or a seller. Figuring it for a buyer who answers a good many of my questions for [478—194] me I would be governed by depreciation, or element, or factor of depreciation, largely by what it was for. If I wanted to know the truth myself, I would figure it; if I was figuring for the purpose of sale for somebody and my employer wanted it figured, I would rather be governed to suit his case.

Just to get at the truth, the depreciation upon that sort of a dam, built wholly of concrete, no iron, no nothing of that kind in connection with it, in a foundation like that, my judgment would be to put the depreciation at probably from half of one per cent to one per cent. If this dam would stand and last forever, I would figure depreciation at those figures because it is customary. I would figure by my general judgment of having seen these things and investigated them and heard the matters discussed by engineers. That is the way that I arrive at my conclusion.

(Testimony of Walter H. Graves.)

Depreciation is the natural wasting away of anything that is in use. Every structure depreciates from the time it is constructed. It would depend on what you meant by the term depreciation; as to whether it covers nothing except natural decay. The question of depreciation is a very complicated question. It is so related and inter-related with a great many other matters—the matters of obsolescence and supersession and inadequacy, and a lot of those things; it is so inter-related with those things that after you start to consider the question you can very easily become involved and confused with all sorts of conclusions, and it depends very largely upon the individual judgment of the man [479—195] that is figuring as to the value of the various factors; by combining and relating to these things you can get almost any result you want. Therefore, there is a very wide range of opinion among men that are equally competent as to just what depreciation is and what its rate is.

I wouldn't use the term depreciation to include within it inadequacy, obsolescence and supersession, under some circumstances. By supersession I mean where a thing is superseded by something else. When I gave the figure of one-half to one per cent. depreciation per annum I certainly did not include inadequacy and obsolescence.

I would have to see the gates before I would figure as to the rate of depreciation on them and the other things in the dams besides the concrete. I wouldn't express an opinion on the depreciation of the bear-trap dam as segregated from the rest of

(Testimony of Walter H. Graves.)

the structure there. The one per cent covered on all the dams. Every dam has some gates. I fancy the gates are of iron or steel; I think there is some wood about them. And I didn't, when I figured one per cent on the whole dam as a structure, figure on the value of these gates or the rate of per cent upon the gates or the relation that the value of these gates bore to the whole structure, in order to get this one per cent. There is a pumping plant that belongs to the city below Post Falls and there is a plant at Spokane and plants at Nine Mile and Little Falls. I have seen the Nine Mile plant; I have been in the power-house; I have seen the power-house of the plant at Spokane only from the outside. [480—196]

If you figure in relation to the capacity of the dam here to increase the capacity of the output of those plants below, I would say that the value of the plant at Post Falls is greater because there are some plants down the river, but not simply because there are similar plants situated in the same country that have no relation. If I owned the Post Falls plant as it is now, I should regard its value very materially greater by reason of the fact that there are other plants down the river and the probability of constructing still others besides those now in existence; simply because the plant at Post Falls has an apparatus and appliance for controlling the storage water an area here amounting to 50 square miles and running into 200,000 acre feet. That water you can let out during the low period, and

(Testimony of Walter H. Graves.)

you can augment the output of those plants down the river possibly on an average of 100 per cent.

I am going to get money out of that in this way: If I own something that will contribute to your output even if I got nothing out of it, if I own something whereby I could augment your income 100 per cent, wouldn't I as a disinterested and philanthropic citizen, figure that I would be of great value, if I got nothing out of it, but the chances are I would get something out of it.

In talking about market value I am talking about hard cash. I would get cash out of the fact that I had benefitted somebody down near the Columbia river, in this way: If you owned a plant down there and I wanted to convince you of the value of this, I would open my [481—197] gates some spring when the water was high and let all the water go through. When the low water period come the low water discharge of the river would measure the maximum output of your plant. Next year I would close those gates and store a very large amount of water and by letting that out during the low period I would increase your output probably by 100 per cent. When you had thoroughly realized that, you would hasten to me and make some kind of agreement in regards to storing that water.

Supposing I had that power plant at Post Falls and had electrical energy, had contracts with the mines in the Coeur d'Alenes to furnish them power and had all our power contracted for, I would have to operate that power plant in order to furnish this

(Testimony of Walter H. Graves.)

electric energy to the people and the general public I am serving in Northern Idaho.

The example I gave was merely a supposition; in other words, I couldn't indulge in any such scheme as I have suggested, to get cash out of the chaps down the river. That was just an idea to illustrate its value. As a matter of fact, I would have to let the water out through my plant to the people down the river, and it is my opinion that I wouldn't have any way of holding them up and compelling them to pay tribute to me if I manufactured electric energy and supplied it to the people of Idaho as a public service corporation.

I wouldn't contemplate seriously operating that way if I owned the plant; I would simply feel that I was creating values incidentally for myself. [482—198]

It isn't true, where you take a rapid-flowing stream like the Spokane river with several plants and a dam, that as you go down the river each dam holds back some water for storage. It is true that the Nine Mile plant holds back the water and creates a lake there at Nine Mile; but if that lake should fill up with sediment it wouldn't injure the Nine Mile plant at all; that dam is built for head, not for storage.

If I take the output of this plant in 1910 as 57 million kilowatt hours and the net earnings as \$164,000 and the capacity of the plant as 15,000 horse-power, I say that the value of the plant as Post Falls, just the Post Falls plant, would be

(Testimony of Walter H. Graves.)

\$2,203,000, at least that. In my judgment it would be worth more than that. I would figure it as a business investment. I would have to go through that if I was going to get definite figures as to what it might be worth. That would take some time. I would have to know more particulars than I do. Assuming that statement of facts, I would say it was worth about two million dollars. That is my judgment, on those assumptions.

The way I arrive at that \$2,200,000 was to take that output and determine its horse-power, and then ascertain its value, the horse-power value, in relation to the net income, and assume that that was approximately the net value of the horse-power; and then assuming that it was possible to develop 15,000 horse-power, to get the rates, and the capitalize that at ten per cent, then deduct the value of the outstanding plants, as has been testified to here. [483—199]

There is quite a difference between 15,000 horse-power and 57 million kilowatt hours, probably 50 per cent. That is, the 15,000 horse-power is 50 per cent more than the actual output for last year. That is on the assumption that that is the ultimate capacity of the plant. That is on the assumption that you could make this plant produce instead of 57 million kilowatt hours 50 per cent more than that. That is on the assumption that what they were actually producing in the year 1910 is only one-half of what they might produce with the same dams and power plant, possibly with other instal-

(Testimony of Walter H. Graves.)

lations. I don't know what they have got installed there at this time; I have not seen it lately. I don't know whether with the appliances they now have there they could generate 104 kilowatt hours instead of 57 million, but with the supply of water they have I fancy they could. With the supply of water they have and the head they have they could develop 57 million more kilowatt hours. Whether they are ready to do that now or not I don't know.

Under that assumption I capitalize that at ten per cent, because you had introduced evidence bearing on that as the proper rate of interest; not that I consider ten per cent as a fair rate for capitalizing a plant, I think I consider 5 per cent as a fair rate; I don't know as I could say that on any hydro-electric plant no matter where situated, but on a large plant under conditions like this, yes. I consider the market perfect; that is, there is no question about the market, either as to the present or the future. The market is in the surrounding country.

In the first place you have testified to a market in the Coeur d'Alene country. That market is made up [484—200] largely of five year contracts. That takes care of that market for the immediate future. I don't regard the Coeur d'Alene market as hazardous for this reason. The Coeur d'Alene mining camp is the result probably of 20 years development; it is not a mushroom mining district, and even at its high water period at this time there is nothing indicating that it will subside to nothing in the immediate future. There are ore

(Testimony of Walter H. Graves.)

bodies enough in sight. That isn't all. That whole country up and down the range here for 50 or a hundred miles is, as anyone that is familiar with it knows, known *at* a mineral bearing country. There is every reason to believe that other mines will be discovered; there are large bodies of lead and silver known to exist further down towards Salmon City; there are some big mines down there with known deposits of lead and silver. The only reason they have never been developed is because there is no transportation down there. It is quite a ways from Post Falls. But I only refer to that as an evidence that the whole range is mineralized.

Supposing the mines should give out entirely this is in the midst of a country of undeveloped resources. It is surrounded by a country that will sooner or later be settled up, and in all probability densely settled. It will be an agricultural country. They are introducing very rapidly electricity into agricultural districts, into the suburban districts; over on the coast they have learned that. They have learned that if they put the price of electricity down where a farmer can get at it he will use it on his farm, and they are using it on [485—201] the farms, and they are using it in the suburban communities very largely. This whole country to the south of us is covered with timber. They are introducing electricity in the logging operations and the milling operations, and after the land is logged off they will introduce electricity to remove and clear the stumps, and the land will be settled and

(Testimony of Walter H. Graves.)

occupied as agricultural land. As the land is settled up, towns grow up and manufacturies grow up, and there is every reason to believe that the market will increase. Those are some of the reasons that I would advance as to the permanency of the market for this plant. I wouldn't consider it hazardous in any sense. And the further fact that nearly every power-plant on the coast or in the west here has had a market for its product almost as soon as it was installed and developed, and scarcely any large hydro-electric plant has been installed on the coast that hasn't very soon thereafter been compelled to install a steam auxiliary to augment their output. There are no electric light plants or hydro-electric plants in this section of the country that been constructed any length of time with a surplus of market on their hands; I know that.

I don't consider that this mining business in Shoshone county will continue as good as it is now forever. I haven't any idea of how long to figure on that. When the mines play out I didn't say you will sell the power, instead of to the mines, to settlers on logged-off lands in northern Idaho. I figure this way, that by the time the mining industry would [486—202] reach a stage of utter nonproduction, in other words, there would be no mining industry in this country, that the country would be so densely settled by rural population, agricultural people, and the use of electricity will become so universal among them and in the industries that grow up incidental to that settlement,

(Testimony of Walter H. Graves.)

that there will be a market for all of the power that this company will produce at all their plants.

They are trying the experiment, in order to sell to these small farmers, of putting the price down, over on the coast, and successfully. The small farmer cannot pay 15 cents per kilowatt hour, no, sir. They could buy it at the price now sold to the mines, they could afford to pay that. The possibility of other power competition up in that neighborhood is a very small unit. The Thompson Falls plant is a reasonably large plant. I have never seen it. I know nothing about it except on hearsay. Ultimately you would sell the power of Post Falls in this region of country hereabouts, in Kootenai, Shoshone and Bonner counties, within a reasonable transmission distance. I figure there would be a market for all of it, in addition to being in competition with the two power companies that are in Spokane. I also figure, in figuring upon the value of this property, that the Government or state, either through the legislature or through a public service commission, would have the power to regulate rates of service. I don't know of any public commission that has regulated rates to the annihilation of a power plant. The tendency is to regulate downwards, to squeeze out exorbitant profits. When you regulate the [487—203] rates downward you decrease your earning power, and when you decrease your earning power you decrease your capital account, or rather your value based upon a per cent.

(Testimony of Walter H. Graves.)

When I was asked the hypothetical question about the output of 1910 as 57 million kilowatt hours and a capacity of 15,000 horse-power I understood the question to mean a continuous capacity of 15,000 horse-power, the way horse-powers are operated. Horse-powers are operated to the full capacity; there is a variable load on the horse-power plant. I figured on an average capacity of 15,000 horse-power. I didn't think the question meant anything different from what it stated. The only way I could answer that question would be on the hypothesis of a continuous 15,000 horse-power day in and day out 24 hours of the day, and that that 15,000 horse-power was the output of the plant. Presumably, when I figure on an average I also figure on a maximum and minimum, whatever would produce that as an average, it might be one per cent above and one per cent below, or half a per cent above and half a per cent below. It depends altogether on the kind of contracts and the kind of service you are giving. When you figure on your output you must figure on your minimum because you have contracts with people furnish them with electric energy all the time. Take the service furnishing now to mines that operate 24 hours a day, you have got to figure on your minimum capacity; but that is not the case ordinarily with power plants. I can't estimate any maximum capacity in this plant. I have figured on the abstract proposition. It is a matter of calculation [488—204] how much water it would take to make an average of 15,000 horse-power; it would

(Testimony of Walter H. Graves.)

depend on the head. I stated that I visited the plant several times. I don't know the head there. I haven't figured it out whether this plant produced 15,000 horse-power or not.

[Testimony of E. Tannatt, for Defendant.]

E. TANNATT was called and sworn as a witness for the defendant; on direct examination by Mr. ELDER, testified:

My name is E. Tannatt; I reside at Spokane, Washington. I am a civil engineer, graduated from the Washington State College and also attended the University of Illinois. My experience as a civil engineer commenced in the early '80's, commencing in the railroad work and general engineering and surveying, later in charge as chief engineer of hydraulic work and work of that nature in the island of Hawaii for six years; for five years professor of civil engineering at the Montana State college, and for the last four years have had an engineering office in the city of Spokane.

In the actual construction of hydro-electric plants I have had no experience, but I have had experience in charge of general construction, on the Hawaiian Islands principally, for the Wya-loa Agricultural Company. My work was largely more generally in the nature of designing and engineering than it was in actual construction. I attempt to keep posted and up-to-date on principal magazines on engineering; I have lived in Spokane the last time for about four years. I came to the state of Washington in 1881. I am familiar with the Spokane

(Testimony of E. Tannatt.)

river. [489—205] The Washington Water Power Company controls the waters of the river at Post Falls by means of a dam which impounds the water above and in Coeur d'Alene Lake and also regulates the control of the flow of the water below the dam. They can increase or decrease the flow of the river below the Post Falls dam by the regulation of their gates and the waste water passes through their gates. They do that, I know, by actual measurements. I measured the river in the earlier years and also have had occasion to measure it within the last two or three years several times.

There is an increased value in my mind to the Post Falls plant by reason of the fact of the control of the water at Post Falls for the plants below the river; due to the fact that the peak loads on the plants below Post Falls can be met by an increased water supply from above; also that the peak load occurring at the Post Falls plant requiring the use of water has already developed power. Knowing the time that is required for the increased volume to reach the lower plants, it can be taken advantage of in the lower plants in maintaining a peak load at that point; so that by simply knowing the time it takes water to pass from one point to the other, with proper management and proper engineering, it undoubtedly is taken advantage of. The water is of increased value over what it would be if the plants were owned individually and not under the same management.

I am familiar as an engineer with the rate of

(Testimony of E. Tannatt.)

interest which is charged in this community, that is, Eastern Washington, Northern Idaho and Eastern Oregon, [490—206] by engineers in capitalizing when using net income of a corporation such as the Washington Water Power Company. I know in connection with a number of pieces of work in which I have been engaged. I have been associated with eastern engineers in estimating the value of proposed power developments, and that estimate has been more or less based upon the net earning capacity in relation to its valuation, that is, the valuation has been based upon the net earning capacity. The rate used is from 5 to 6 per cent. We based it on the eastern value of interests on eastern money, because the money is borrowed largely from the east, in the larger developments, and the money is practically eastern investment. The larger plants are not financed in the western country; they are almost entirely from eastern capital.

I have had occasion since my residence in Spokane to inform myself as to the market for hydro-electric power in this community. I don't consider the market in electricity a hazardous one, for this reason that where water-power can be developed within a certain cost the money can be readily raised for that class of investments.

Cross-examination.

(By Mr. GRAY.)

That plant in the Hawaiian Islands is a plant in which the water is taken from three streams, brought through the divides of three mountains into a large

(Testimony of E. Tannatt.)

storage reservoir; the water is then carried down the mountain sides for a distance of about a mile and a half or across to a vertical drop of between three and four hundred feet. The power is there converted into electric energy used on the plantation, and the waters are there [491—207] carried onto the plantation for irrigation purposes. The power generated is variable, depending upon the amount of irrigation; the irrigation is the factor that controls the power in that particular case. I do not believe I could give you the figures as to the size of the power installation there, the capacity of it. It is in the neighborhood of four or five hundred horsepower. The amount actually utilized on the average is variable; it will run from three to four hundred horse-power on the average. That power is transmitted to different parts of the plantation and used in power developments. Electric lights part, and power also. The sugarcane is ground by gas. The power is used for transmission. That is not the only power installation which I have ever designed or constructed; that is the only one I have ever had actual absolute charge of the construction of. I have never been engaged on any other in actual construction. None have been constructed upon my designs. For four years I have been in Spokane in private practice. My work has been throughout the states of Montana, Idaho and Washington. No hydro-electric plants have been constructed that I have done any work upon; none are in the course of construction which I have investigated or designed.

(Testimony of E. Tannatt.)

I make no point of that class of construction. For the last four years in Spokane I have been following particularly the class of hydraulic development pertaining to pumping and irrigation and am not following hydro-electric practice, although I am a hydro-electric engineer. I have been working in Oregon for the John [492—208] Day Power Company; I reported for them; also for Dr. N. J. Blaylock, the plant which was sold by Mr. Graves, the plant that is now owned by the Great Northern Railroad Company at Chelan. That plant, I understand, was sold and financed practically on my report.

We put in a considerable plant for the Blaylock Orchard Company at Walla, artesian wells, and a pump; I designed the pumps and the development for them. That is in a way for the distribution of water around that farm. This Blaylock Development on Lake Chelan, that is the Chelan Water Development, at the time was partially developed. I made a report on the method of development, and that method differing from any system that had been reported upon prior to that time, I am informed, was sold through this report. That I think it has not been since developed for the reason that it is held by the Great Northern Railroad Company. It would have been about a five million dollar proposition, with the John Day Power Company, if it had been carried through. It was not carried through.

I appraised a public utility. I appraised the Pacific Light & Power Company's plant, at Pasco, for the city of Pasco; that is the system that supplies

(Testimony of E. Tannatt.)

the city with water and electric lights; that was for the city, to advise the city as to the value and cost of that plant, the present value. Using the word investigated, I have not investigated except with reference to this particular dam, the effect or the value of a controlling works upon power streams; because investigation means purely from your personal inspection. As far as studying [493—209] the matter with other engineers who have been in charge of such works, and approximating my value of it from a method that is not purely investigation under my understanding of the meaning of the word, I have. I am familiar with the Post Falls plant only in a way. I have known the plant from the time it was started, but of late I have not seen the plant; haven't seen it for several years since completion. I was last there four or five years ago; I can't give you the date. It was still in the course of construction. I don't know what the power development is at the present time or was in the year 1910. I wasn't there in January, 1911. I say that the works at Post Falls can control and do control the flow of the river. I know it by actual measurements. I was called upon here sometime since, within the last two years, to measure the Spokane river repeatedly for a proposed power development. I had also measured the Spokane river in earlier years before the Post Falls plant was in, and I found in making these repeated daily measurements that at certain periods of the day we had an increase in the flow of the river, that is, the readings were not the same.

(Testimony of E. Tannatt.)

We were trying to get an average, and a low-water flow at that point. At the time this was taken the investigations we carried on showed it corresponded as near as we could estimate to a night load at Post Falls.

As you should be aware generators controlled by water wheels have their governors, in which, when the load comes onto the generators the gates of the turbine wheel are automatically opened to allow more water to pass. If there was a large peak load, in that instance [494—210] we would have more water going down the river during the period of the load and as nearly as we could estimate your peak load occurred at a certain hour corresponding to about what the flow of the river would give; the velocity of the river would give the increase of the power at that time. This proposed water development was at the Trent railroad crossing. One of our measuring stations was there; the other one right above there. I didn't read these every hour but we had men that read them every hour. I put in a station and made the actual reports, about six times during the season. We obtained the depth, and then I had my sheet showing the velocities at the different depths, so that we could get the quantity. That was within the last two years. I can give the time of year by referring to my notes. I haven't my notes here; I came unprepared for anything of that kind. It was as early as four or five o'clock in the morning we made these observations. The fluctuations of the river were such that we wanted to

(Testimony of E. Tannatt.)

make a special study of it. I went there early in the morning, in the middle of the day and late at night repeatedly. I couldn't give you the exact number of occasions. As I recall, the flow of the river was greatest about eleven o'clock in the morning. I couldn't tell for a certainty when it was lowest; it was early in the morning, because we made the most trips to try and find the lowest point. I didn't say there was an increased value to that property at Post Falls by reason of the fact that the Washington Water Power owns other plants in the state of Washington. I said that there was increased value [495—211] due to the fact that the river could be controlled. The increased value is due to the fact that they can control the flow of the river from below the Post Falls plant and the other plants in operation below that can be regulated to take advantage of that increased flow. I wouldn't say that is taking into consideration the dams solely from the standpoint of a reservoir, rather than from the standpoint of a power development at Post Falls. No such consideration as that eliminates the value of the property at Post Falls as a power development. If you can take water once and use it, and then arrange a lower plant so as to use that same water at the time when its maximum reaches its plant, and have a maximum at your lower plant, and then repeatedly use it, you have made the water of far greater value than if you simply had a controlling works here at this plant, because you have taken advantage of the control in the first place.

(Testimony of E. Tannatt.)

The measurements I took were some ten miles above Spokane. I wouldn't attempt to say how long it takes the water to go from there to Spokane. I wouldn't attempt to tell the hour of the day. I wouldn't attempt to tell how fast the water flows above there. I didn't attempt to determine that, only as an average. You will find rapids and you will find still places all the way down. You must remember that the city waterworks comes in there and again controls your plant. I would say the city waterworks are more valuable because of the control of the water at Post Falls. If the Washington Water Power Company owned the city pumping station [496—212] the Post Falls plant would undoubtedly be more valuable because of the fact that the city has a pumping plant and power station at Spokane. It would either have to be that the ownership must be the same in order to make the property more valuable or the control would have to be agreed upon below; that is, any mutual agreement with the other owners. For instance, you could make the city waterworks of more or less value, depending upon your control, within certain limits.

If you could switch the load it would make the Post Falls plant as a power site more or less valuable. If you were operating the city waterworks as your principal factor then there would be a certain amount of value that would be increased to the city waterworks, and there is an increased value at the present time, in my mind, for the reason that you have made the flow more even in the river than it

(Testimony of E. Tannatt.)

used to be in the early days. That undoubtedly makes the Post Falls property more valuable. It is the key to the whole situation. If you owned the city waterworks then there would undoubtedly be certainly an increased value. Assuming that the plaintiff owned any plants below Post Falls the fact that the water is controlled would give the site additional value. If the controlling works at Post Falls are used for the purpose of controlling water plants further down the river it would affect the Post Falls plant so far as its value is concerned. There are some power plants in the Spokane river below Spokane; there is one at Nine Mile, owned by the Inland Electric Company. I couldn't tell you when this peak of the water gets [497—213] down to the Nine Mile plant. I haven't investigated that. That plant would have an increased flow whenever you could so control the excess water that would pass through your wheels, wherever you could so handle that water as to make it meet a corresponding peak load down the river, regardless of whether the plant was owned by the plaintiff or any other company, that would give to that plant down the river an increased value which would reflect an increased value to this Post Falls plant.

Every plant on the river from the Post Falls plant down would have an increased value from your control. They wouldn't all be having the benefit of this high flow of water at the same instant; some might be in a position where they couldn't avail themselves of it. I couldn't say whether there would be only

(Testimony of E. Tannatt.)

one really benefitted within a distance of forty or fifty miles. I think every last one of them would be benefitted from the very start to the very finish by the control of the water. It would be worth money only to the property down the river. The Post Falls plant would be benefitted by assisting in harmonizing the condition at the Post Falls plant with the plant lower down the river. You might, by doing that, affect the efficiency and the value and the output of the Post Falls plant as a plant.

I have spoken of five to six per cent being the proper rate upon the net proceeds in hydro-electric plants. An investment of six per cent on the net, represented by the net proceeds of the plant, a proposition that eastern capital will jump at. I couldn't give you the names of any individuals controlling eastern capital [498—214] that is invested in any such investment, but I know of capital being invested. To state that I absolutely know of a dollar being in your pocket or mine is one thing, but to state that I should judge that is different. I can't make a statement giving the names of any individuals or of any capital being invested upon such a proposed earning as that and I won't. I can't say that I don't know of any.

The prevailing rate of interest on farm mortgages in this country is about 8 per cent. I don't consider that investments in power developments, hydro-electric plants, are more safe than farm mortgages. It isn't always a question of safety in an investment. A farm mortgage, for instance, we are handling at

(Testimony of E. Tannatt.)

the present time at 8 per cent; the money is loaned at six per cent by eastern parties; two per cent of that is handled by Spokane people. That is purely an investment.

In water-power development almost invariably a development, as the Washington Water Power Company would indicate, has been at an increased valuation, besides the original capital, so we will have an increased value in the holdings as well as in the rates to investors.

I said the rate of interest which I gave is really what is the prevailing rate of interest on eastern capital; that is the way I want it understood. There are hazards in water-power development, but those hazards are not necessarily purely in a line of power development itself. The danger of being controlled by large corporations is one of those hazards. And the danger of being controlled by the state is a risk. And the laws [499—215] of demand and of market; you are liable to lose your market. But at the same time those are the same conditions that apply to practically any business proposition that comes up. Under some conditions there is hazards from competition. There is very little hazard under present conditions, to my notion, of competition. I am familiar with Thompson Falls. The plant has got competition there for 80 per cent of the output of its plant. I know where Kootenai Falls are. There is liable competition there. Those cases should all be taken into consideration in determining a fair rate of return. I made some surveys upon the Priest

(Testimony of E. Tannatt.)

river for a power plant. That would hardly come in competition with the plaintiff company. My report was to the effect that that should not come into competition with the plaintiff. That was a local development. But these others I have mentioned might come into competition. Those should not be taken into consideration in determining what should be earned when you are figuring on the net income. If I understood the question, it was the net income, the net returns upon the plant, six per cent upon the net returns of your plant for that year. I have taken into consideration the hazards in allowing 5 to 6 per cent. The business management should take it into consideration. You have hazards and you also have advantages that you have to take into consideration as a while.

[Testimony of Boyd Hamilton, for Defendants.]

BOYD HAMILTON was called as a witness on the part of the defendants, and on [500—216] direct examination by Mr. ELDER testified:

My name is Boyd Hamilton; cashier Coeur d'Alene Bank & Trust Company, reside at Coeur d'Alene; have business connections in Spokane with the estate of J. J. Brown; I am secretary of the Columbian Spokane Investment Company. I am familiar with the going rate of interest in this community, which is charged on loans of a million dollars or more; that rate varies from 5 to 6 per cent, depending upon the character of the loan and the amount of money.

(Testimony of Boyd Hamilton.)

Cross-examination.

(By Mr. GRAY.)

The loan to the Idaho & Washington Railway, five million dollars, was at 5 per cent. That was in the form of bonds or notes. I don't know what those were sold for; the company is not in the habit of giving it out, if they discount them. We note in the records the rate of interest the bonds draw. I don't know in this case what they were sold for. The Panhandle Lumber Company, I think, had a loan of \$1,200,000 at 6 per cent; that was a more hazardous loan because it was on perishable timber. Part of it was covered over perishable timber. I don't know what that was sold for; the specified rate in the loan was 6 per cent. The probabilities were they discounted those for the reason that they were payable any time after 1914, and the people that loaned the money on those securities wanted it to stay out. I don't know of any other million dollar loans. I don't know whether the million dollar loans were on [501—217] the full value of the property or not. That might have something to do with the rate of interest. I have been in banking ten years. The amount borrowed, considered in connection with the full value of the property, has something to do with the rate of interest. The average rate of interest we get in our banks is 8 and 10 per cent. Small loans will average nine and a half per cent, short time loans, 30 to 60 days.

(Testimony of Boyd Hamilton.)

Redirect Examination.

(By Mr. ELDER.)

I know of loans less than one million dollars at 5 and 6 per cent. There was a loan on the Rookery in Spokane, \$300,000, at 5 per cent. There was a loan on the Club building in Spokane, at the corner of Washington and Riverside, at 5½ per cent.

Recross-examination.

(By Mr. GRAY.)

I don't remember whether this Rookery loan was a life insurance loan. That is the best corner in Spokane. I mean the old Club building at the corner of Washington and Riverside; that is one of the best corners in Spokane. In the Sweeney case it was a 5 year loan and they paid one per cent commission. That was on the Rookery. One per cent on the amount for securing the loan.

[Testimony of J. B. Marcellus, for Defendants.]

J. B. MARCELLUS was called as a witness on the part of the defendants, and on [502—218] direct examination by Mr. ELDER testified as follows:

My name is J. B. Marcellus; I reside at Boise; I am a civil engineer; I graduated from Kansas University in 1904; I had some practice before; I was rodman on railroad construction previous to that time; I was assistant engineer on the Spokane & Inland Power Construction at Nine Mile during parts of 1906 and 1907. I wasn't chief engineer on the work; I was assistant engineer. That was a hydro-electric plant; 12,000 horse-power capacity; I am in

(Testimony of J. B. Marcellus.)

the State Engineer's office at Boise at the present time; have been there four years last April; I take three electrical engineering magazines and purchase later books as they are on the market from time to time. I run the contour and the profile on Crane Creek reservoir and power development. The dam hasn't been constructed; the power plant has not yet been installed. I visited the plant of the Washington Water Power Company at Post Falls twice; I know the character of the construction, in a general way; I know the amount that is usually figured as depreciation on dams of the character of those of the company at Post Falls; I base my answer on what I say is usually allowed upon Daniel Meade on Water Power Development; and Foster quotes some statistics, what the Government allows on similar constructions. In a general way I have read articles in various places, what they have allowed for depreciation; I have never of my own knowledge constructed a dam and watched its life, so that I can't tell of my own knowledge what the actual depreciation is. There is a great many theories of what it will be; [503—219] I wouldn't want to say of my own knowledge that I know what the depreciation on a dam is, because it might last a hundred years and it might last a thousand. From the information which I state I am testifying from the rate that is usually allowed for depreciation on dams of the character of the plaintiff's is one per cent. Assuming that the net income of the Post Falls plant is \$164,166 and that the value of the transmission lines, substations

(Testimony of J. B. Marcellus.)

and so on in Shoshone county is approximately \$262,000, and the assessed value of the easements on the overflowed lands and the fee lands is practically \$200,000 in this county, and that the value of the power lines in this county is \$183,000, in my opinion the value of the Post Falls plant is \$2,636,616.55. In my opinion the reservoir is a part of the power plant. In my opinion by holding the waters in the reservoir at Coeur d'Alene the company benefits plants lower down the river.

Cross-examination.

(By Mr. GRAY.)

I am a draftsman in the City Engineer's office in Boise. I have had the official title of assistant city engineer. That is a part of my business, draftsman; that is my last title, draftsman. In connection with my work as draftsman in the City Engineer's office I haven't had anything to do with water power plants. I said I ran the top contour and profiles down Crane Creek for the Crane Creek reservoir and power line. Any surveyor can do that. A hydraulic engineer would have to know how to survey. What I did was to make a [504—220] survey; ran an instrument. There is a proposed power development in connection with it. I was assistant engineer down at Nine Mile plant; the chief engineer was Johnson. I was working for Sanderson & Potter, the contractors. They take contracts and do engineering. The company had had a consulting engineer and he came out there frequently. I had nothing to

(Testimony of J. B. Marcellus.)

do with designing the plant, or the plans of it; only the details. As an example, in the bottom of the river I made the soundings and also designed the coffer dams, so that when they floated out they were settled down as nearly water tight as possible. I had nothing to do with the original designs. I measured up the excavations and concrete and such things, as an assistant engineer ordinarily does among other things.

The elements I took into consideration in giving the value of \$2,636,000 were the net earnings of \$164,166.14 capitalized at 5 per cent, giving a value of \$3,283,322.80. Deducting from that transmission lines and substations in Shoshone county, which is \$262,585, the overflowed fee lands, \$201,121.25, the pole lines in Kootenai county, \$183,000, which makes a total of \$646,706.25, gives \$2,636,615.55. That was not all I took into consideration. The fact that the plant controls the flow of the Spokane river at low-water time I took into consideration. If there was no reservoir there the net earnings would be very much less. I took into consideration the control; that is one thing. There is a going-concern value, that also is included in the net earnings. If it were not a going concern their net earnings would be much less. [505—221] They wouldn't be anything then. I considered the market. If there was no market there would be no net earnings. I noted down a few things here—site, location, cost of construction, market, going concern. I didn't divide those items in getting at my total figure into dollars and cents be-

(Testimony of J. B. Marcellus.)

cause they are material to the net earnings, they all contribute to the \$164,166.14. None of those things entered into the mere calculation. I would have to know what entered into the net earnings in giving my calculation in arriving at these figures; that is, I couldn't have given what contributed to net earnings if I didn't know what I considered as entering into the net earnings. I don't know how I could say any more than that I considered those things all contributed to net earnings and those are the things that in my opinion contributed to net earnings, and my answer was the result of a mere matter of calculation and knowing what to consider, for instance the 5 per cent. In determining what was a fair depreciation, a dam will depreciate, but what the life of it is, is theory. I considered that the dam will be there in useful operation a hundred years from now. I never say a dam a hundred years old. It would be a little hard to separate the depreciation of the one article. Concrete, of course, itself will not depreciate. The tainter gates would probably have to be maintained; the wood would rot out, the iron would rust out; there is no doubt about that. I can't answer what I allowed as proper depreciation for bear-trap gates and tainter gates; I took the whole structure into consideration. The depreciation on that portion of the dam is going to be very great, it would be greater than concrete sure. From [506—222] my own knowledge I wouldn't like to give an opinion as to how the bear-trap would cost without at least giving it a close examination. I couldn't really give the de-

(Testimony of J. B. Marcellus.)

preciation on that property. I couldn't separate the depreciation. I couldn't say whether, in all probability, long before they wear out they will become obsolete—the bear-trap contrivances and those tainter gates. [507—223]

**[Testimony of Fred E. Wonnacott, for Defendants
(Recalled).]**

FRED E. WONNACOTT was recalled on behalf of defendants and testified as follows on direct examination by Mr. ELDER:

I have the 1912 statement. I don't know whether or not this substation is in the same condition it was in 1911. My deputy, Mr. Snyder, who assessed the property in that locality informed me of it. My deputy is not here.

[Testimony of John P. Gray, for Defendants.]

JOHN P. GRAY was called as a witness on the part of the defendants, and on direct examination by Mr. ELDER testified as follows:

I was attorney for the Washington Water Power Company in the case of that company vs. Charles Waters and Bertha Waters and others. I believe that statement of facts or bill of exceptions which you have was made without first ordering by question and answer the evidence in the case. I can't testify as to where the original transcript is; I had nothing to do with the preparation of it; all I know is what my office told me. I was present at the trial. I tried the case; I have a fair recollection of some of the evidence given by Mr. MacCalla in that case; I

(Testimony of John P. Gray.)

am unable to say whether he didn't swear to the following facts in that proceeding: "The place where we are in the process of construction of a new plant is what is known as Little Falls, about 15 miles north of Reardon by transmission line, and about 281½ miles from Spokane. We will have part of that plant in operation next fall or early winter, if we have good luck; we expect to have the first unit of 5,000 K. W. in operation then. The low water capacity of the plant, with storage, when completed, will be 19,000 horse-power. The [508—224] increased power down there would be about 6,000 horse-power, by reason of the reservoir, to be exact 5,400 with the installments complete. We get about 5,400 by addition of the reservoir." I wouldn't swear that he testified to that, I don't think there is any such increase of power at Little Falls myself, I would be unwilling to swear that Mr. MacCalla swore to that. I might have certified to that transcript, I don't know; I wouldn't swear to all of the transcripts I have certified to; I do not know what is in all of them; it is impossible. My opinion is, Mr. Elder, that if you have some record that says that, there must be some error in it. I think the increase at Little Falls must be between 1500 and 2000, from my own acquaintance with the storage capacity of the lake, and I can't conceive that Mr. MacCalla stated at that time in that hearing that the lake storage, "will give us a gain of about 5,400 horse-power. Without lake storage we can generate in the neighborhood of 13,600; with the lake storage we can generate about 19,000

(Testimony of John P. Gray.)

horsepower in Spokane.”

Referring to Little Falls, I do not intend to question these things, but some of these questions are put to witnesses on hypothetical cases, assuming that there were 61½ feet of storage in this lake—I remember all the way through in those trials the question was repeatedly asked, assuming there was 61½ feet of storage, and that would make the witness answer—and of course, if you take a slide rule and figure it out, that is the way you get to it. Actually there was never more than 31½ feet of storage in this lake, and when it is put into statement form it is sometimes very difficult to state whether it is asked as a hypothetical question or not. [509—225]

If you take a water curve of this lake, anybody can tell you that there is not at any time in excess of 31½ feet of storage in that lake. I have examined them; I have been through this litigation, and have been through nothing else much for two years and have heard it explained, in various ways. I have told you that it isn't fair to ask me whether Mr. MacCalla testified: “It will require about three years to make the development. A gain through lake storage to this plant of about 12,000 horse-power, with the total fall developed. Without lake storage we will have 21,300 horse-power, that is, without the lake storage, 21,300 horse-power. That is with the upper falls developed. With the storage we will get 33,400 horse-power, giving a net gain of 12,100. The cost of developing will be very nearly the same. There would be a slight difference in a little bit on the ma-

(Testimony of John P. Gray.)

chinery. The actual machinery is a relatively small part of the total cost of development. In other words, by holding the water of Lake Coeur d'Alene and the reservoir and basin, we increase the power of the Spokane plant from 21,300 to 33,400 horsepower."

I was present at the trial and have a vague idea of what the testimony was. I remember there was some question gone into, if the Washington Water Power Company would develop some more falls down the Spokane, whether they would get some more power. Either Mr. Knight or Mr. McCarthy prepared the transcript in that case and I cannot tell, I was not here at the time the transcript was prepared. I tried the case and went away before it was decided, and the transcript was already printed when I got home. [510—226]

I don't believe Mr. MacCalla testified in that case at that time, "that the elevation of the slack water in Coeur d'Alene River is the same level as the water in the dam, no appreciable velocity, you can tell that by looking at it; there is absolutely no current there. Logs will float with the breeze. It is a physical fact. Low water season in Coeur d'Alene Lake and the Spokane River extends from the middle of July, depending upon the season, to October, up to February, the low-water season, it is lowest in September and October, as a rule. With 6½ feet of storage which the design of the bear-trap will permit storing in the lake, we can develop at Post Falls about 11,900 horsepower, during low water season; during high-water

(Testimony of John P. Gray.)

season we have installed about 15,000 horse-power. During high-water season, there is more than water enough to supply us. Our low water flow at Post Falls would permit us to develop about 5,650 horse-power without any storage. That makes a gain of about 90 per cent, 11,900, about 90 per cent more."

I think I have explained to His Honor that repeatedly in that case there was a hypothetical question put, assuming that there was 6½ feet of storage in this lake, and Mr. MacCalla, in all the litigation, I am sure, always said there was no such storage in this lake, and I know there isn't, and I might just as well, Mr. Elder, ask you if one of your witnesses didn't swear that there was 15,000 horse-power at Post Falls. I do not think Mr. MacCalla so testified. Some of those things, I think perhaps he testified to, but I don't think he ever testified there was 6½ feet of storage in this lake. Mr. MacCalla is now in Australia. He was [511—227] recently operated upon twice. I cannot tell you who reported the case.

Mr. WERNETTE.—Mr. Barstow took the notes and Mr. Barstow read to Mr. McCarthy from the original notes.

[Testimony of M. D. Barstow, for Defendants.]

M. D. BARSTOW was called and sworn on behalf of defendants, and on direct examination by Mr. ELDER testified:

My name is M. D. Barstow; I am court reporter of the Eighth Judicial District of Idaho under Judge Dunn. I have been such over three years. I have been court reporter approximately 25 years. I re-

(Testimony of M. D. Barstow.)

ported the case of the Washington Water Power Company vs. Waters. I read to you yesterday certain extracts from my reporter's notes. I have transcribed the portions which I read.

(Said documents were thereupon marked Defendants Exhibits 3, 4 and 5.)

Defendant's Exhibits 3, 4 and 5 is a true and correct transcript of my notes as transcribed by me.

Preliminary Examination.

(By Mr. GRAY.)

There were a great many pages of shorthand notes and these are just excerpts from his testimony, and do not begin to represent all of it on this subject. I didn't go on and read through the record to find out how much there was on the subject. That is all from the cross-examination. The last two I think are from the cross-examination; the first, I think the questions were asked by you.

(Thereupon Defendant's Exhibits 3, 4 and 5 were received in evidence.)

Thereupon it was stipulated that the entire testimony [512—228] of Mr. MacCalla upon the subject should be introduced in evidence as exhibits and filed with the court.

**[Testimony of C. F. Uhden, for Defendants
(Recalled—Cross-examination).]**

C. F. UHDEN was recalled and upon further cross-examination by Mr. ELDER testified:

I know there is one substation at Cataldo, I never saw it, the plans were drawn under my directions. I do not recall when the original station was put I

(Testimony of C. F. Uhden.)

am pretty sure it was prior to 1911. It has not been dismantled that I know of, I would not necessarily know. The operating department dismantles and constructs stations at times with which I am not acquainted at all. I am not in the operating department. They are not all constructed under my direction; I would say there has been some improvements placed on it in the last year. The station has been improved from time to time.

**[Testimony of C. F. Uhden, for Plaintiff (in
(Rebuttal).]**

C. F. UHDEN was called on the part of the plaintiff in rebuttal and upon direct examination by Mr. GRAY testified as follows:

Mr. Elder asked me yesterday to figure out certain things. I believe it was concerning the storage, the increase of the power from storage alone. I have figured that out. I know exactly what the area of Lake Coeur d'Alene is, from maps furnished me by the surveyor general's office, of Idaho, and I computed that myself. These were the township maps which we obtained from the United States Surveyor General of Idaho. The map that was sent me from the United States Surveyor General of Idaho was a complete map of Lake Coeur d'Alene, to which he certified as to its correctness, compiled in his [513—229] office, from the township surveys surrounding the lake, and from that I computed the area of the lake. These are ordinary township maps; the only map that I know of that will give the outlines of the Lake Coeur d'Alene is the one published by the Inland Railroad System showing their lines, that

(Testimony of C. F. Uhden.)

is, their electric lines from Spokane to Coeur d'Alene, and showing the route their boats travel on the Lake. The outlines of Lake Coeur d'Alene have never been surveyed in a separate survey that I can find any trace of. I cannot tell which map Mr. MacCalla had before him at the time he testified to the storage here in the Lake.

I have calculated how much additional horsepower there is generated at Post Falls by reason of the Lake storage; I know what the height of the old dams was in elevation.

Preliminary Cross-examination.

(By Mr. WERNETTE.)

I do not know exactly from my own knowledge what the elevation was; those surveys, however, were made under my direction. I did not take those elevations from the surveys made prior to the time the original site was sold to the plaintiff company. I know whether or not those surveys are correct; I didn't check them up myself, other parties did under my direction. I mean the surveys from which the elevation of these dams appears were made under my direction, by my subordinates and I had charge of the surveys. If I close the memorandum I have before me I can state what the elevation of the old dams was; the elevation was 2116.5 above mean sea level.

Direct Examination.

(By Mr. GRAY.)

Those were the old dams put in in the three channels of the Spokane River by Frederick Post. They

(Testimony of C. F. Uhden.)

were not all the [514—230] same elevation. There was a variation of a maximum of 2 feet; they were spill-way dams. The dam in the North channel where the bear-trap now is, was 2116.5. Where the tainter gates now are, there was a crib dam. By my statement that there was a maximum difference of 2 feet I mean the main dams across the three channels. This where the tainter gates are was a wing dam, and that wing dam was about 6 or 7 feet above main dams. I know the elevations of the present dams. I have observed and know of the operation of the present dams and their effect upon the lake levels of Lake Coeur d'Alene since their construction. I know from records which I have received from the Government at the gaging stations, taken at Spokane and sent direct to my office what the flow of the water in the Spokane River has been since the construction of the present dams, past Post Falls, and those are shown in the water supply papers exactly; I cannot tell you what it is. These water supply papers give the record of the flow of the water at Spokane every day in the year. The storage season is 120 days a year by that is meant the time we are holding the water.

[Testimony of A. J. Wiley, for Plaintiff (Recalled in Rebuttal).]

A. J. WILEY was recalled in rebuttal on the part of the plaintiff and on direct examination by Mr. GRAY testified:

The average effective head at Post Falls 52 feet. It would require 3,384 cubic feet per second to pro-

(Testimony of A. J. Wiley.)

duce 15,000 horse-power at Post Falls, assuming that the low-water flow of *the as* supplemented by using the full storage capacity of the reservoir to increase the flow during the low-water period, is 2,029 second feet, the average horse-power that could be produced [515—231] would be 9,000 horse-power, that would be 58,814,640 kilowatts hours per year. Assuming that the power produced at Post Falls in 1910 was 57,127,000 kilowatt hours, I would say that the plant was being worked to about 90 per cent of its full capacity. To determine the amount of storage which the dams at Post Falls afford, I would start with the highest level to which the water could be stored, that is, in the case at Post Falls I would start with an elevation of 26.5, and then I would compare that with the average lake level in previous years, considering the lake level, the average lake level in previous years, as the actual bottom of the reservoir, a long term of years before the dam was constructed. It would be a matter of opinion as to whether you would take the average or the lowest. I take the average because the lowest only occurs once probably in a very long period of years, 20 or 30 years, and I don't think it would be proper to use that. That has only occurred once before, and it may never occur again, and I think you should use the actual average rather than the extreme low level. If the low water occurred at more frequent intervals then I think you should use the lowest year.

If you confine it to 1 year, I do not take the low-

(Testimony of A. J. Wiley.)

est for that year. I would take what the water actually was at different periods throughout the storage season and average those. You see this lake has a storage naturally without any dam in there at all. The contracted channel at the lower end of the lake does store water naturally, and we simply supplement that natural storage by means of the dams, so that I would deduct from the total storage the natural storage which occurs anyway, and take the difference, in order [516—232] to get the effect of the dams, the storage created by the dams.

Well, it would seem to me, your Honor, that the whole thing lies in the fact, the whole situation lies in the fact that this is not a new reservoir, that there is a natural reservoir there, as I said before, caused by the contraction of the water at the throat of the lake, which always has stored water in the lake, and has always been used. That water that has backed up there during the high water of the river, for instance, there is a very large discharge going through the outlet, and in order to go through the outlet, it must rise in the outlet to a higher level. That has the same effect as a dam has, to a certain extent. That draws off, as the flow of the river decreases, the level at the outlet of the lake naturally drops, and that draws off the water from the lake, so you do use the stored water naturally whether there is a dam there or not. Now, what I want to get at is what effect on the storage has the construction of these dams there, so I take as the old conditions the average elevation of the low water years, and see

(Testimony of A. J. Wiley.)

what the storage in the lake was during those years, and then I deduct that from the storage with the dams in place. The difference is the actual effective storage caused by the dams. And I might supplement that by saying the actual method of calculation, I would assume that no water was being brought off from the lake at all except the normal water, but all the stored water was being held there so that you would actually hold the water up to an elevation of 26.5 throughout the season, then I would get the difference between the level at frequent intervals so as to average it. Actually I did it for a ten days period; I took the difference between 2126.5 for a period of ten days, and the average [517—233] low water elevation of the lake for the same period, and averaged all of those, and multiplied that by the area of the lake, and I found from the data given to me that it equaled an average of 4.41 second feet, I believe it was, over the entire area of 45 square miles. It is a very complex subject, and requires considerable study. That was as near as I could get at it in the time I had.

I assume that the highest water level in the lake was 2126.5, and that a certain curve of previous lake levels as given me was correct. This is the curve.

(Document thereupon marked Plaintiff's Exhibit No. 20.)

This is Exhibit No. 20 that I testified from. I assumed that the readings on the map are correct. I could hardly say that that is the common engineering practice which I have testified to, used in deter-

(Testimony of A. J. Wiley.)

mining the storage in such a reservoir. I have never seen a condition just like this before, but to the best of my knowledge and belief it is the proper method.

Cross-examination.

(By Mr. ELDER.)

I took into consideration certain conditions in regard to the natural channel there. I testified that the capacity of the Post Falls plant was not to exceed 58,000,000 K. W. hours, from the information furnished to me by the Company as I testified. The machinery they have there, providing they got the water, could develop about 15,000 horse-power. The company has arranged in that dam for an additional unit, which would make the further capacity of about 3,000 horse-power, that would make a total capacity of 18,000. The plant [518—234] would be very much less value without storage. I don't think that the company would be able to contract taking into consideration its peak loads, a great deal more than 57,000,000 K. W. hours of electricity. I would like to explain that 57,000,000 K. W. hours represents what they actually did sell, and what the plant produced operated continuously on the average. I should think that for a short period they could run at the full capacity of the plant, that is, full generator machinery capacity, probably up to 15,000 horse-power, or probably over that for a short period. I wouldn't consider that the real capacity of the plant. It wouldn't make any difference how much machinery they had in there, the real capacity

(Testimony of A. J. Wiley.)

of the plant is the product of the machinery and the water.

If the water is there to do it, their machinery is so arranged, if the load is placed upon the plant, they can at the present time generate 15,000 horse-power, and it would for a short time any way, that is, if there was any water in the lake at all, it would generate 15,000 horse-power for a short time, but if there was less than a certain amount of water in the lake it would rapidly draw down the level of the lake, and it could not continue to develop that amount. The amount that I am assuming in that answer that the storage is the amount given to me by Mr. Gray. Mr. Gray gave me the amount of storage as sufficient to supplement the low-water flow of the river to such an extent as to produce a continuous flow during low-water period of 2,029 second feet. That is, supplementing the natural flow, the whole flow, the natural and the impounded water. [519—235]

Redirect Examination.

(By Mr. GRAY.)

I have computed the area of the lake in second feet for a period of 120 days. It is 529 second feet, that is, assuming 4.4 feet for storage, it is common practice to add at least one unit over and above what you expect to develop, to be held as a reserve in case of injury to the other units.

Recross-examination.

(By Mr. ELDER.)

According to my evidence, they have about twice

(Testimony of A. J. Wiley.)

the capacity installed; they have considerable more capacity than I think is necessary.

[Testimony of C. L. Cory, for Plaintiff (in Rebuttal).]

C. L. CORY was called on rebuttal by plaintiff and upon direct examination by Mr. GRAY testified:

To show the proper method to compute the storage resulting from the change in the level of the water, I have drawn this sketch, upon which B. C. represents a basin which may be used to store water supplied at least in part by two streams, one, the stream B., the other the stream C., the outlet of the lake or reservoir being at the point A. The upper sketch is supposed to represent a rough plan or map. The lower sketch is supposed to represent what we would see if we could stand and look on a level, or what is known as a cross-section, the lettering upon the lower sketch being the same as upon the upper sketch, B. and C. showing the current at which the streams B. and C. flow down here towards the reservoir or lake, C. D., and the point A., a point of elevation on which there is to be storage. The first fact which must be remembered is that the storage C. D. is a [520—236] channel for the flowing of water, just the same as the channel B. and the channel C. The water moves through the lake or reservoir toward the point A. The reason the level of the water in the reservoir or lake C. D. is more nearly uniform is because it is wide and the flow is brief. At the point A., suppose it is a natural flow over perhaps a slight rocky, rough impediment, which I will design-

(Testimony of C. L. Cory.)

nate as M., it is perfectly evident that if there is no water whatsoever flowing over the impediment M. the level of the water in the reservoir C. D. will, if I could draw that line perfectly straight, would be all below, and as I have cross-sectioned it, just as soon as the amount of water flowing in from the streams B. and C. is greater than nothing, then the water will go over the crest of this impediment, and there will be an additional amount of water in this lake, a little higher as we come toward the source, depending upon the velocity with which it flows. I will draw that in a different kind of cross-section, the other way. I will call that O., and I will call this which would come below the natural impediment Q. That which is represented by O. is storage due to the fact that there is water coming in the streams B. and C. That which I have represented by Q. would exist if there were no water whatsoever coming in from B. and C. Now, if we modified the conditions in this storage reservoir by building a dam and raising the water up a considerable distance, 50 feet or 100 feet, or any amount, the amount of storage at any time during the year which we have added by building the dam will be represented by a straight line drawn back here, and if at any time there is water flowing over this dam or wasted, the storage will be [521—236] increased by just as much as it is put up above. Now, then, upon that explanation of the facts, in investigating the useful storage which might be put in a reservoir or lake C. D., I would attempt to find what was the level for as

(Testimony of C. L. Cory.)

many years back as I could average throughout each year, for the days that I needed storage, and I would determine as nearly as I could the level of the water going over this natural barrier at different days from the time I needed the storage, say the first of July until the first of October or November, as the case might be. If we had a very dry season, and these streams should actually go dry on the 1st of July, then everything which I could add above this line would be useful storage. If we had a very wet season and the water should come in so rapidly in the streams B. and C. as to raise the water high over this impediment in a water fall, then the storage which I would gain that year by my dam would be decidedly less, might be nothing; in other words, for a very wet year or large supply of water for that year, the storage would not be augmented in the least by the dam. For that reason we estimate storage as an average over a period. We know that in some years this may be needed, and in some other years it may not be needed; in some years it may be needed to tide over one or two or three years.

I wouldn't put in a plant of this kind, unless I could have the water practically every year, but if there were possibilities of storage the magnitude of which would be such that no water might come in at all for we will say the year 1900, and perhaps no water at all for the year 1901, if there was a possibility of building a sufficiently large reservoir to tide over those dry years with the reservoir, [522—237] you could design your plant in proportion to that.

(Testimony of C. L. Cory.)

In getting at the amount of storage needed, you would the every other year that you needed water and would leave out of calculation the years you didn't need water, because the value of stored water is absolutely and intimately connected with the time you want to use it. I would take the average of years instead of the low years, because in estimating the value of a storage, it would not be fair to say that the average of storage would be based upon one year where a large amount of water would be available, because the value of that storage, taken in that year only, would be nil. On the other hand, it would not be fair to say that this storage would have a value ascribed to the lowest possible natural flow of water in the stream. To put it in another way, it is unquestionably the proper way to estimate the usefulness of storage to base it upon a record of a number of years, rather than abnormal years. I intended to say that I would not take that abnormally low-water stage as the basis of calculation. We would take the average of those years that were so low as to require storage.

Now, it is perfectly evident that it doesn't make any difference whether this water we are getting as a result of our dam M., and which I have not cross-sectioned, and which I will designate as S., it is perfectly evident that the result of the building of the dam is not S. and O. and Q., but it is only S. It doesn't make any difference whether this stored water due to the dam rests on the rocky bottom of the lake, or whether it rests upon water which would

(Testimony of C. L. Cory.)

have been there independent of the construction of the dam. That is [523—238] the useful storage, and it can be used solely, and considered as useful if, in the operation of anything down the stream, whether it be irrigation works, power plants, water-works, or anything else, upon the basis that we can draw off the stored water S., and get every bit of it out just exactly prior to the time when these streams begin, in their normal increased flow in the fall, to make up for that. To put it in another way, if you choose, you can draw every drop of the stored water S. off in one day, if your channel is large enough. If you choose, you can draw it off so slowly that at the end of the period you would have only half of it drawn off. But the ideal condition, and one which it is perhaps quite impossible to attain, but one which you should perhaps with experience be able to approximate, would be to draw off the water beginning when you need the water and arrive at the end of the season as nearly as possible when it would be augmented. The only danger is that you might be left without water, or you might leave considerable water, and the rains come along and increase the flow. That is the proper method of computing storage where the storage is a storage through which live streams flow throughout the season. It is not the right storage if we have some place up where—suppose we have a power plant which is located here at the point X., we have a stream which will flow normally greater or less that we will call Z. We have up here a stream which we

(Testimony of C. L. Cory.)

know goes dry, but which has a torrential flow, and with the possibility of a reservoir, which I shall call R. Now, if during our storage season we can build a dam and increase the level of the reservoir R. by any [524—239] number of feet, 10, 20, or 100, the useful stored water in that reservoir is the total depth you store at the time of its average area.

Cross-examination.

(By Mr. ELDER.)

Supposing there is a fall in the river from the mouth of the storage to your plant, and you dredge out or cut out, make that lower, that does not add any further storage, for if you should dredge out at the point A., and dredge out and widen and deepen the channel, then the normal flow of these streams would eliminate the water which I have designated as Q., when there is no water flowing out, and, of course, eliminate O., which is the addition due to piling up. In other words, you would have what would correspond to a continuous stream, and not a basin.

Supposing you dredge out the mouth of the lake, make that deeper, it would allow you to store useful water, there is no doubt about that. In the operation of a plant of the kind at Post Falls, they are so arranged that automatically they use the water as the load is called for by their customers. In other words, no water is wasted, due to the fluctuation of the load. There is no other method of figuring storage than this, under these conditions, as it is the only correct method of establishing the additional

(Testimony of C. L. Cory.)

storage caused by such a dam. It is not a fact that if a dam is put in there 10 feet, that the amount stored is ten times the area of the lake. The storage will depend upon the period over which the storage is used, and if the height of the water in the reservoir without the dam varies on account of the amount of water flowing through the reservoir to any degree, in other words, that the reservoir is a reservoir naturally, [525—240] outside of the dam, we must deduct all of that water which is naturally storage in the stream between any two dates in order to get the useful storage resulting from the construction of the dam.

[Testimony of J. C. Ralston, for Plaintiff (in Rebuttal).]

J. C. RALSTON was called as a witness for plaintiff, in rebuttal, testified on direct examination by Mr. GRAY.

My name is J. C. Ralston; I am an engineer; have been engaged in that profession about 25 years. I took the civil engineering course of the Troy Polytechnic. I spent four years as a civil assistant in the engineering corps of the United States Army on the Missouri River work, and two years of that on Washington and Georgetown harbors, on the Potomac River, in hydraulic work and construction; thereafter a number of years as assistant engineer and division engineer for the Union Pacific Railroad at Omaha and through the west generally, including some of its various lines, and since that time I have

(Testimony of J. C. Ralston.)

been entirely in private practice in the west. I have been long acquainted with the Spokane river from Lake Coeur d'Alene to Post Falls, and have made an investigation of the throat of the lake and of the river between Post Falls and Lake Coeur d'Alene.

I know what the controlling feature in the lake level was, and in the discharge of the lake through that channel, in the Spokane River, prior to the construction of the present dams. The controlling element or feature, were the old Post dams, which were used for many years prior to the building of the Post Falls plant, that they exercised an influence upon the storage of the lake and upon the flow and discharge *influence upon the discharge* out of the Spokane River and the [526—241] outlet of the lake exercises a very profound influence upon the discharge influence upon the discharge out of the lake. And unquestionably did prior to 1907. Its greatest influence would be felt at the low water stage. The old dams control the level of the lake up to a certain elevation, that would be 2116.5, that is to say, it absolutely stopped and held water back at that level. If, however, there was a discharge into the lake and from the lake into the river and over those dams, which would raise the water, they still effect a retarding, or exercise a retarding influence upon the discharge. I think those dams were effective in raising what would otherwise have been the level of the lake; that is assuming that the water could get to the dams from the lake. That is why I said that when more water was coming in to raise it above the

(Testimony of J. C. Ralston.)

actual crest of the old dam, that it would exercise a retarding influence. That presupposes that the water gets through the throat. The water couldn't get through the throat if the lake fell down to that elevation. When the water got down to the crest of the dam, and from that below, those dams would have no effect upon the low water level of Lake Coeur d'Alene. Outside of the dams, from my knowledge and investigation, the throat of the river affected the level of the Lake Coeur d'Alene prior to the construction of the present dams.

Suppose at the time the low water, what is called the low water season, these old dams had been taken out absolutely, had been removed, the level of the lake would not then have been lowered. The average bottom of the river at the throat is from a half a foot to a foot higher than the crest of the old dams.
[527—242]

Cross-examination.

(By Mr. WERNETTE.)

I said the bottom throat of the lake, or where the Spokane River starts from Lake Coeur d'Alene is about half a foot higher than the crest of the old Post dams. I made those measurements in June, July and August, 1910. I made them myself. The high point of the throat is approximately 2117, and the lowest 2117. It is as level as this floor. In June, 1910, the Blackwell Mill was in operation; their workings there and construction work did not affect the throat of the river in the sense of raising the level of the throat. There were slabs and other workings

(Testimony of J. C. Ralston.)

there by which the width of the channel was narrowed so that it might effect an influence in that regard, but not any influence with regard to the height, but a restricted channel in point of width.

I know of no other outlet beside the river proper from Lake Coeur d'Alene. I said the old Post Falls dams held back the water 2116.5 in low-water period, and if the water was higher than that it would retard the flow to a certain extent, as an obstruction in the river channel, and if the dams were taken out completely it would influence the discharge of the Spokane River; it would permit a more ready discharge. I know of no time when the Spokane River has run dry. The bottom of this throat, as I call it, is sand, very fine, compacted silt. The old Post dams had been in possibly 15 or 20 years prior to the time I made my measurements; those measurements were made in 1910. The old Post dam was out of existence since perhaps 1906. I know from my own knowledge what the height of the old Post dams were and from my investigation. I made a pretty complete and elaborate [528—243] survey for a similar power plant in 1900.

[Testimony of F. E. Wonnacott, for Plaintiff (Recalled in Rebuttal—Cross-examination).]

F. E. WONNACOTT was recalled for further cross-examination.

(By Mr. GRAY.)

I prepared a list of lands showing the agricultural lands in the county assessed at over \$150 an acre.

588 *The Washington Water Power Company vs.*
(Testimony of F. E. Wonnacott.)

(Document thereupon marked Plaintiff's Exhibit No. 21 for identification.)

The first tract there is part of Lot 2 of the St. Maries Land Company; I think that land is across the river from St. Maries in that platted Meadowhurst, or Riverdale. I am not able to say whether it is divided into small tracts, except this small piece. It gives the number of acres as 14 acres, assessed for \$300 an acre. The next tract assessed to the Coeur d'Alene & St. Joe Transportation Company, I do not know whether that is their terminal at Harrison or not. I do not know that this is agricultural land. I haven't any means of knowing, from the records or segregating these lands, whether the list contains not only contains city property, but wharf property and sawmill sites. The property assessed to the Dryad Lumber Company in excess of \$150 an acre is land bordering the river right down where they have their booms and sawmill site; extending along the Spokane River; I don't think this is where they pile the lumber; it may include some part of the mill site.

The item, Lake Improvement Company, I do not know whether that is the Hayden Lake Hotel or not, it is land bordering on Hayden Lake, 36 acres of it. Part of it, I think quite a good deal of it, is used for agricultural [529—244] purposes. I do not know what these tracts are assessed to the Spokane & Inland Empire Railway Company; I do not know that that is their terminals. They have a large lot of valuable land, part of them agricultural.

(Testimony of F. E. Wannacott.)

This piece assessed to Mr. Kerl is on the other side of the city park, here along the water frontage. That one item is only a quarter of an acre. I told the boys to put in anything more than \$150 an acre; I told them to try and get in that list of agricultural lands. These lands are not classified on the books, because they are all patented lands, and I cannot always tell whether they are agricultural lands or not. In assessing the agricultural lands they were assessed in 40 acre Government subdivisions, and some of the lands in these forty acres might be worth \$300 an acre; there was probably five acres or ten acres of \$200 or \$300 land; there was probably ten acres of some other class, and it was all footed up and an average made; that is the way it was all done.

I cannot recall a piece of property where I did that, or give you figures on the piece of property; nearly all of the property I have included in this list is without the city limits of Coeur d'Alene; I have included a lot of other small tracts of land immediately adjoining the city limits; those are farm lands used for farm purposes.

I do not mean to say that this land of Mr. Kerl's is agricultural land; I didn't tell them to put that in either. Those little tracts in that addition to St. Maries, known as Meadowhurst, are across the river from St. Maries and are not irrigated lands either; there is not a large part of the people who live there; this includes all of the agricultural [530—245] lands. My deputies did this work, a lot of it. I

(Testimony of F. E. Wonnacott.)

don't know every individual piece of land there myself, but I have included all the lands that I think are agricultural land in here. Here is a piece here, J. J. Cuttrell, the northeast quarter of the southwest quarter of Section 18, 5 north and 3 west; it is close to Coeur d'Alene, but is agricultural land; there is 70 acres there. It is not in the city, it is outside of the city limits; there are 70 acres in there assessed at \$200 an acre and 30 acres assessed at \$275 an acre.

(List thereupon marked and received in evidence.)

[Testimony of Jay E. Jellick, for Plaintiff (in Rebuttal).]

JAY E. JELICK, a witness on the part of the plaintiff, on rebuttal testified as follows, upon direct examination.

(By Mr. GRAY.)

I testified in this case before. I have taken a course in the profession of engineer and draftsman, and I followed that practice for a number of years. I am now in the employ of the Washington Water Power Company.

It was stipulated in open court that Andrew Bloom and Mr. Campbell, if present, would testify that they had taken readings on a gauge established at the works of the St. Joe Boom Company, at or near the mouth of the St. Joe river commencing in the month of April 26th, 1903, and extending down to date; and that the readings are as shown in the two books which are produced here, and which I will not offer in evidence. Counsel for the defendant did not

(Testimony of Jay E. Jellick.)

admit as to the correctness of the readings, but admitted that said witnesses would testify as to the readings as shown by said books. [531—246]

(Witness continued:) I have made a curve or set of curves showing the elevations of the water as disclosed by the readings of Mr. Bloom and Mr. Campbell at the St. Joe Boom Company's works, and as shown by the two books which I had in my hand.

(Thereupon plat was marked Plaintiff's Exhibit No. 22.)

That plat was prepared by me, it clearly shows the elevations of the water on the various days in 1911. The curve has been corrected because the gauge has raised a foot. The curve is nothing more or less than a practical representation of the elevations of the lake at the St. Joe Boom Company's place, the sorting gap, near Chatcollett, and represents the elevations of the lake on every day of the year for the years 1903 to date inclusive, that is, from April 26, 1903, to date. The notations on the bottom represent the months and days of the year, and the figures on the side represent the elevations of the lake according to the U. S. Geological Survey. The 0, 1, 2, 3, 4, 5, 6, 7, etc., on the left-hand side represent the gauge of the St. Joe Boom Company, which is an arbitrary gauge, reading in inches, and the figures from 2119 to 2133 represent the elevations according to the geological survey. The key is shown here for each of the years. In 1910 it seems there were no readings taken in January, February and

(Testimony of Jay E. Jellick.)

March, on account of the lake being frozen over for that period of time. I have platted day by day the elevation of the water, as shown by the readings of the St. Joe Boom Company up till March, 1911, when it is shown that the gauge had been moved, had been taken off to [532—247] be repaired, and replaced wrongly. I made a correction of one foot up until our gauge was established there in October, 1911. I have checked the readings of the St. Joe Boom Company gauge and other readings at Coeur d'Alene City, at Johnson's boat-house, and other places where there are gauges. The readings at Coeur d'Alene City practically agree with readings taken at the St. Joe Boom Company's works, all through.

(Plaintiff's Exhibit No. 22 was then offered and received in evidence.)

Cross-examination by Mr. ELDER.

(Witness continued.) The gauge was originally established by the St. Jose Boom Company, and, as I stated, was merely an arbitrary gauge; by that I mean that it was a rod or something of that kind, and graduated into feet and inches, and nailed to a pile, and later on it was tied in by different surveyors to the bench mark here in Coeur d'Alene City. By that, I mean that the elevation of the lake was taken at a certain day, and noted by this arbitrary gauge of the St. Joe Boom Company, when the lake, of course, was level, some time in the summer when there was no high water of any kind. There is practically no difference at low water between the end of the lake and at Chatcolet; in September there isn't

(Testimony of Jay E. Jellick.)

any. I couldn't say whether there was any difference at Chateolet and at the throat of the Spokane River at the bridge at the mouth of the river, because we have no gauge established there. But I would say that I don't believe there is any difference. I made that map wholly from the gauge measurements as taken at St. Joe by the St. Joe Boom [533—248] Company and our company.

(Thereupon water supply paper No. 38 was offered and received in evidence.)

Mr. GRAY.—That is the table in 1899, on page 367 of water supply paper No. 38. Elevation of water of Lake Coeur d'Alene 1899, May 20, 2130.645; May 23d, 2130; July 3d, 2128.242; July 24th, 2123.643; August 5th, five P. M. 2122.551; August 23d, 2121.469.

(Examination by Mr. GRAY.)

I have prepared the elevations of Lake Coeur d'Alene for every fifteen days as shown by the readings of the lake which has been introduced, and the elevations of the water of Lake Coeur d'Alene taken at the St. Joe Boom Works as shown in the books. That paper or table correctly represents those in tabulated form.

(The tabulated sheet was thereupon marked Plaintiff's Exhibit 24, 24, 26, 27, 28 and 29, which were thereupon offered and received in evidence.)

(Witness continued:) From the water supply papers which have been introduced, I have prepared a curve showing the flow of the Spokane River graphically at Spokane, with the rating curves of the

(Testimony of Jay E. Jellick.)

Geographical Survey shown thereon, and the dates as are in the other curves; they are shown on the bottom of the exhibit, and the flow in cubic second-feet on the left-hand side and the key also, and all geological data. That is correctly prepared from the water supply papers, which have been introduced in evidence.

(Thereupon said plat was marked Plaintiff's Exhibit No. 31, 32, 33, 34, 35 and 36, which were offered and received in evidence.) [534—249]

(Witness continued:) From the water supply papers which have been introduced in evidence, they correctly show the flow and were prepared by myself. From the flow of the river at Spokane I have determined what the elevation of Lake Coeur d'Alene was during the years 1891 to 1902, inclusive. I might say that we have readings of Coeur d'Alene Lake from April 26th, 1903, as shown by one of those curves, up to date, and we also have the discharge of the Spokane River at Spokane during that same period, and we have compared the two, we compared the discharge on a certain day with the elevation of the lake at Coeur d'Alene on the day before, allowing the water a day's time to reach Spokane from Coeur d'Alene Lake, and we have discovered that according to certain elevations of Coeur d'Alene Lake there is a certain discharge of the Spokane River at Spokane, within a reasonable degree of accuracy. That was prior to the construction of the present dam, and prior to the changed condition. There are three different curves used, that is, a rising lake, when the

(Testimony of Jay E. Jellick.)

water is rising in the lake the discharge will be different than when the lake is falling, as well as when the lake is stationary, so that it necessitates taking three different curves, a rising lake, a falling lake, and a stationary lake, to obtain the elevations of Coeur d'Alene Lake prior to 1903. We actually have gauge heights and discharges of the Spokane River from 1891 up to 1903, as well as from 1903 on, and from those discharges of the Spokane River we have been able to derive curves of the elevation of Coeur d'Alene Lake prior to 1903. I have prepared those curves showing the elevations.

(Whereupon plat was marked Plaintiff's Exhibit No. 37 and was offered and received in evidence.)
[535—250]

Those curves correctly show by my derived table in the manner in which I have stated, the elevations of the Lake from 1891, April 1st, to April 26th, 1903. I have correctly platted them according to that method upon this Exhibit No. 37, under Mr. MacCalla's direction. From the various curves which I have testified to, I have prepared a composite or average curve, showing the average elevation of the lake on each day from 1891 to 1904, inclusive, and another curve showing the average elevation of the lake on each day since 1907 up to 1911, inclusive.

(Map was thereupon marked Plaintiff's Exhibit No. 38 and received in evidence.)

WITNESS.—That is accurately prepared.

(Testimony of Jay E. Jellick.)

Cross-examination.

(By Mr. ELDER.)

Some of those curves have nothing to do with the St. Joe Boom Company readings; those that do were prepared from the information given by the St. Joe Boom Company, and the company's elevations as taken by themselves. I made those curves myself. I might state that there were practically no computations. The Geological Survey have published the gauge heights in the Spokane River in these different water supply papers that have been introduced, and in some cases they actually published the discharge, but where they do not publish the discharge they publish what is called a rating curve, and that rating curve for different gauge heights is merely a matter of plotting a curve according to their data, and reading off the discharge. What I did was simply a matter of draftsmanship, was simply to take the readings as given to you and draft them on these plats. On that average curve I computed the average height of the water myself. [536—251] I didn't get an opportunity to state that they were taken every ten days. Each heavy line here represents ten days. I didn't take the intervening period, because it would be a little more laborious, and probably would not give any more accurately the water. I made those computations myself.

[Testimony of Frank H. Feller, for Plaintiff (in Rebuttal).]

FRANK H. FELLER, a witness called and sworn on behalf of the plaintiff on direct examination by Mr. GRAY, testified:

I took the datum of the St. Joe Boom Company gauge in the elevation above sea level, as determined by the Geological Survey of Lake Coeur d'Alene.

Whereupon it was conceded that the U. S. Geological Survey datum has been properly shown upon the exhibit.

[Testimony of C. S. MacCalla, for Plaintiff (in Rebuttal).]

C. S. MacCALLA was called as a witness on the part of the plaintiff on rebuttal and on direct examination by Mr. GRAY:

My name is C. S. MacCalla. I am electrical and hydraulic engineer. I was educated at Lehi University from the engineering course; graduated in 1896, and have had about sixteen years' experience in various parts of the country, New York, Schenectady, Sidney, Australia, and in this section of the country. I have, during the course of my experience, had to do with the development of hydro-electric plants. I have been out here now a little over nine years. I came out primarily to take charge of the development of the Post Falls plant, and have been connected with the Washington Water Power Company ever since the year 1903. I had charge of the construction of that plant. I am now general manager of the company. I was somewhat familiar with the

(Testimony of C. S. MacCalla.)

Lake Coeur d'Alene [537—252] prior to the time the present dam and plant of the company were put in, and have remained familiar with it ever since.

Referring to the curves showing lake elevations derived from the flow of the Spokane River at Spokane, I will explain how that information is procured—if we have the known lake elevations for a certain year, with its corresponding flow in the Spokane River for the same year, we can ascertain approximately the lake levels for another year in which the lake levels have not been recorded, if we know the river flow. For instance, take it at a time when the lake, say, is stationary, we take the river flow at that time; now, if the conditions are approximately the same, we can take the known flow for another year and obtain the corresponding lake level. We have plotted three different conditions there, first, with the rising lake level, with a falling lake level, and with the lake at a stationary position, and we have checked these computed curves with known curves, and we find that they agree very closely.

That is common engineering practice in all hydraulic work, and it is particularly accurate with a lake such as Lake Coeur d'Alene, which is a very deep lake, and with jagged bodies of land along its shores; it is a lake not materially affected by wind.

Prior to the construction of the dams at Post Falls there were other dams in the river at that place, and prior to the construction of these present dams I determined the amount of power that could be generated at Post Falls without raising the dams above

(Testimony of C. S. MacCalla.)

their then level. We have operated that plant for about six years, and have determined [538—253] from the operation how much power can be developed on an average during a season at Post Falls; at high water, of course, very much more power can be developed in any spring than during the low-water season. It would not be feasible to develop the plant for high water flow, on account of the demands for power throughout the year being fairly continuous. Lake Coeur d'Alene and the Spokane River are very materially subject to changes in the amount of flow, occasioned by natural causes. Our Government records show that the flow varies from some 1200 second-feet up to thirty or forty thousand second-feet. My attention was called to the following testimony, given in the spring of 1910 in the case of Washington Water Power Company against Waters:

“Q. How much power with the present dam you have constructed at Post Falls that you are now maintaining, do you develop, with the storage reservoir which you have—which you are using, by the maintenance of the present dam?

“A. With six and a half feet of storage which the design of the bear-trap will permit storing in the lake, we can develop at Post Falls about 11,900 horse-power.

“Q. 11,900? A. 11,000.

“Q. During high water?

“A. We have installed about 15,000 horse-power.

“Q. More than water enough to supply it during that period of time? A. Yes.

(Testimony of C. S. MacCalla.)

“Q. Without that storage, what horse-power—average horse-power, at low water, could develop—at average low water, I mean during those low-water months? [539—254]

“A. Our low water flow at Post Falls would permit us to develop about 5650 horse-power.

“Q. You say that would permit you to develop that? A. Without any storage, yes.

“Q. That is a gain of how much?

“A. That is a gain of about 90 per cent, the difference between 5650 and 11,900.

“Q. That would be over 100 per cent, would it not?

“A. No, sir; 11,900 is about 90 per cent more than 5650, I think. Yes, I am in error; the low-water flow is—low water 6250 horse-power. With storage, six and a half feet, we get 11,900, a gain of 5650 horse-power, about 90 per cent.”

We had been operating at that time for three low-water seasons. We are able to develop at Post Falls during the low-water season since 1907, about 11,000 horse-power. We find by actual operation of the plant that about 11,000 horse-power is the maximum power that we can get out of the plant during the low-water season, which averages about four months. It varies, of course, to some extent from year to year, depending on the natural flow of the river; a very low year would be less than a very high year. Theoretically, 11,900 horse-power is the amount of power we ought to be able to develop at that plant; actually we find in practice that we cannot get that much out of the plant under average conditions.

(Testimony of C. S. MacCalla.)

The reason for that is very clear. We are unable to actually draw out all of the storage, and for the further reason because we never can tell just at season in the fall of the year the rains will come and the natural [540—255] flow will increase, and we would be unable to let the entire flow out, for instance, say, the 1st of October, if the rains didn't come when they usually do, they might be somewhat delayed. For instance, certain years the low-water flow has extended into February, whereas, as an average, it is usually about the middle of October or early in November.

I testified in the Waters case that under old conditions you could develop 6250 horse-power, at low water. That would give us an additional horse-power by reason of the storage of 4750. The only difference I desire to make in the figures I gave at that time is that. I would say that the figures given by theoretical calculation and actual practice are very close. The average low flow of water for low years was 1200 second-feet. All of this additional horse-power is not the result of artificial storage by reason of the construction of the present dam. There is a certain natural storage in the lake which would come out in any event; the gates control that to some extent and add to it. It is correct, as has been testified to here, that there are installed in the plant at Post Falls five units of 3000 horse-power each; 3260 second-feet is the maximum capacity of the wheels, which is in excess of the generator capacity. In all appliances we have to have a spare unit in case of a

(Testimony of C. S. MacCalla.)

breakdown; we install one additional unit as a spare capacity, and, as it figures out, we have a trifle over the capacity of one unit to spare. Four units would be about 12,000 horse-power.

In designing the dam in 1904 we left an additional opening just on general principles. It added practically nothing to the expense. -It might be desirable to install [541—256] an additional spare unit, if experience with these units would warrant it. We never have done so because we believe that it was unwarranted. The natural minimum level of the lake is approximately 2120 feet above sea level. The works at Post Falls would hold the water at 2126.5, a total of $6\frac{1}{2}$ feet. That, of course, includes a certain amount of natural storage which is in the lake in any event. The lake acts, of course, as a natural reservoir, which equalizes the flow of the river to a certain extent, but without the controlling works, of course, that storage cannot be used later on in the low-water season. Now, as a matter of fact, as I explained before, we don't draw out all of that $6\frac{1}{2}$ feet on account of operating reasons. Those falls referred to in my testimony in the Waters case in regard to the company preparing plans for the development of the water falls in Spokane have not ever been developed; they are not in the course of development. In explaining, my testimony given in the Water is as follows:

“Q. What horse-power did you have before that?

“A. With the total fall developed without the lake storage we will have 21,300 horse-power.

(Testimony of C. S. MacCalla.)

“Q. That is with the gain?

“A. No, this is without the lake storage, 21,300.

“The COURT.—Is that the present capacity at Spokane?

“A. No, sir; that is with the upper fall developed. With the storage we will get 33,400 horse-power, giving a gain of 12,100. The cost of development would be very nearly the same. There would be a slight difference, a little bit on the machinery. The actual machinery in the [542—257] plant is relatively small part of the total cost of development.

“Mr. KERNS.—In other words, by holding the water of Lake Coeur d’Alene and the reservoir basin you increase the power of your Spokane plant from 21,300 to 33,400 horse-power?

“A. That is it exactly. We contemplate to put in there four 7,500 kilowatt generators, 30,000 kilowatt, or total of 40,000 electrical horse-power.

“Q. Is it not a fact that the Washington Water Power Company has another dam for the generation of power in Spokane, below the Spokane dam?

“A. This one in process of construction, yes.

“Q. How long has that been in process of construction?

“A. Nearly two years.

“Q. How near is it to completion?

“A. We hope to have part of it—the first part of it running in the neighborhood of next October or November, somewhere along there.

“Q. That new dam can be added to as the demand for electric power continues to grow?

(Testimony of C. S. MacCalla.)

“A. Unfortunately, the entire dam has got to be put in the first time; in other words, the entire investment has got to be made as far as dams and buildings go.

“Q. You can add to your units in that dam the same as you add to them at Post Falls?

“A. Yes, the buildings will hold the units. The lake flowage there will give us a gain of about 5,400 horse-power.

“Q. Without lake storage, how much power could [543—258] you generate in that new dam?

“Q. Without lake storage we can generate in the neighborhood of 13,600.

“Q. With the lake storage, how much?

“A. About 19,000. The same storage affects the city of Spokane; it has a pumping plant for water supply; also affects any power site on the river.

“Q. Affects it; it is a benefit?

“A. It benefits it, yes; benefits the city about 67 per cent.”

Have you any explanation to make of that testimony, Mr. MacCalla? If so, just make it.

I say, in Spokane, of course, the plant then under discussion has not been developed, and is not now under development. The present plant benefits to a certain extent by the storage, but not nearly to the theoretical extent, for the reason that we have no local storage capacity in Spokane. Now our maximum load on our system occurs in the afternoon and early evening, which is the time that the Post Falls plant has the maximum load, corresponding with the sys-

(Testimony of C. S. MacCalla.)

tem maximum. It takes about eight hours for that water to get down to Spokane. The result is that the maximum flow due to the maximum load at Post Falls reaches Spokane in the morning hours, at three or four or five o'clock in the morning, which, unfortunately, is the time of our minimum load, and we are unable to utilize it. In other words, water at that time is always wasted, even in the low-water season, under the present construction. So that that increased flow, by reason of the peak load at Post Falls, isn't utilized at Spokane. [544—259]

At Little Falls we get a certain amount of gain from it, although the same conditions exist down there, but to a less extent. We there have a little bit of local storage; in other words, we can draw the water level down a few feet below the dam; but that storage doesn't amount to much on the actual conditions of operation; it does help a little bit. The theoretical amount would be somewhat greater than I testified before. Since that time, and before the completion of the plant, we added a few feet to the top of the dam. Theoretically it would increase our power at Little Falls if the water could be utilized in the same manner that it is utilized at Post Falls. Theoretically the gain at Little Falls would be about 5650 horse-power. Now we cannot get that on account of the water down there at the wrong time, that is, at the time the maximum flow in the river arrives at Post Falls, this time does not coincide with the maximum load which it is necessary for the station to carry.

(Testimony of C. S. MacCalla.)

The usefulness and benefits from the storage here depend upon the ability to store it above the plants further down the river. The theoretical benefit there, assuming that we could use all the water would be 2650. We cannot get anything like that on account of it being impossible to have any local storage. Any local storage would flood the city, which, of course, is out of the question.

In the figures which I gave showing the increased power at Spokane, that included the development of the upper falls, which we were then working on. The actual amounts we gain at Little Falls by reason of this lake storage is difficult to [545—260] state, but I think, in a general way, it would be 80 or 90 per cent of the 5650 horse-power. That is occasioned largely by having storage there. It takes about 28 hours after the water leaves Post Falls for it to get to Little Falls; that time varies with the different stages of the river. Our company is developing a plant away down the Spokane River, that is not completed. We don't expect to have that completed for three years.

Cross-examination.

(By Mr. ELDER.)

The power that is generated at Post Falls is delivered in various parts of Idaho. The statement which you read from the water-gauge, "We furnished from our plant at Post Falls a maximum of 11,000 horse-power at one time to the mines in Shoshone County, in 1909," sounds about right; I think that is true; it is my recollection that that was in

(Testimony of C. S. MacCalla.)

March, we were undoubtedly furnishing the power to the Coeur d'Alene railroad, somewhere in the neighborhood of 1,300 horse-power, that is my recollection. We furnished power to Coeur d'Alene City, a small amount; I couldn't answer from memory how much power we furnished to Coeur d'Alene City, Rathdrum and Post Falls during this same time.

The maximum amount of power we can develop at Post Falls during the low water season is 11,000 horse-power. Of course, at other times of the year the amount is limited by the machinery installed. We can generate about 15,000 horse-power when there is sufficient water in the river; at times we have generated that amount; there are, of course, other times that the deficiency has to be made up from power generated at other plants, and we do that frequently, supplementing the capacity from Post Falls with the power from [546—261] other plants, to furnish the Idaho load. The power to the Inland Empire Company to the Coeur d'Alene Division is distributed from the Post Falls plant, it may not necessarily be generated there. Our plants are tied together so that we can draw on any plant for electricity needed, under certain conditions; that is not strictly correct, although under certain conditions it is. In emergency conditions we could do that. Of course, the natural and proper way to supply it is to furnish the power from the nearest plant, in order to give the best service. During the summer season, the low-water season, we have to supplement the power from Post Falls by power from one of our

(Testimony of C. S. MacCalla.)

other plants. In the high water season we supply the Idaho load direct from Post Falls. In that case we do not have the system tied together.

We generated 6,250 horse-power with 1,200 second-feet. That was a little bit more than the minimum flow before the dam was put in. It is an average of the low years. The 6,250 would be a fair average of the minimum amount developed before the dams were put in. I think that was about the minimum flow with the exceptions of two occasions that I remember of, caused by an artificial condition, a log jam in the lake during extreme low water, which, of course, wouldn't occur again, so it wouldn't be fair to take the extreme low water. The extreme low water was about 1,020 feet. The gain with our flowage rights above the dams, above the previous condition is about 660 odd second-feet. The low-water flow is the determining feature in determining the amount of power or the flowage, but that would not be proper to take the low-water flow, which you know is caused by a conditions which would not recur again, so therefore in [547—262] figuring the low-water flow and determining the amount of power developed at Post Falls, any good engineer would naturally neglect such a condition as a log jam caused there during old conditions, which couldn't occur again. The statement that the lowest water at Post Falls prior to the time of the putting in of your dam was 1,020 feet, caused by a log jam is correct. I think that existed twice about a month apart; that is my recollection, it was either in 1905

(Testimony of C. S. MacCalla.)

or 1906. The first time was either the last of August or the first of September, and the second time was about a month later. I can give very closely from the records, the low-water flow at Post Falls during September, 1904; the curves show about 1,400 second-feet at Spokane which corresponds to about 1,200 at Post Falls. I think 1905 was the lowest water on record. Of course, as I stated, the extreme minimum conditions referred to, of flow, would not bear any particular relation to the lake elevation at that time. The low-water flow those two periods was caused by a log jam at the outlet of the lake which temporarily shut off the flow of water out of the lake without materially affecting the lake level, that is, it didn't last long enough to raise the lake materially. We consider though that about 1,200 second-feet is the low-water flow of the Spokane River, natural flow.

You understand that this upper plant at Spokane has not been developed, and is not under development, but the principal expense there would be the construction of the tunnel, about 2,000 feet, and the installing of the controlling works, and those elements would not be affected [548—263] by the additional flow. The additional flow would not require any larger tunnel and gates; it would require an additional investment in generating apparatus.

We have one water-power plant in Spokane; it is in the vicinity of Monroe Street and the river. We have no plant in course of development at Post Street; we have a substation there; no power is gen-

(Testimony of C. S. MacCalla.)

erated there; it is purely a distributing station. The power is generated at the Monroe Street station. I couldn't say offhand how much of that has been built since 1907. I have been there all of the time, but I don't recall just how much has been spent. I have had charge of the work; I could get that information for you, if it is necessary, but I couldn't give it offhand. The additions to the plant at Post Street substation would depend, of course, on the increase of local business; the power from our various plants is taken into the Post Street, and distributed for use in the city.

The theoretical amount of power which can be developed in Spokane more than could be prior to the construction of the present dam, is 2,650 horsepower, actually it is somewhat less than that. The Spokane plant is about 8,200 horsepower; that is the generating capacity. Unfortunately, it isn't a fact that we can shift our maximum load so as to use the water from this lake here, from our storage to our different plants, and in that way take advantage of it. We can do it to a certain extent, but it doesn't materially affect it, owing to the high load factor of our load system, the load factor being the ratio of the average load to the minimum load.

Redirect Examination.

(By Mr. GRAY.) [549—264]

We have since the construction of the present plant at Post Falls used it as fully and as efficiently for the development and generation of power as we could, and if it had been owned separately and apart

(Testimony of C. S. MacCalla.)

from any other plant; and we have operated more effectively than if it were a separate plant, owing to our ability to supplement the power from other plants during the low-water season.

Recross-examination.

(By Mr. ELDER.)

I stated we have another plant under construction at the present time at Long Lake. Long Lake is about between 25 and 30 miles west from Spokane. It is the name that has been given to a water power developed on the Spokane River; it is about 41½ miles from Little Falls. The additional flow during the low-water season flows down the Spokane River and is available to some extent to any power site or any plant, developed or undeveloped, which may be on the river. The ratio of increase in power that this lake will add to the Long Lake plant will be that of 661 to 1,861. When we figure that the increase storage amounts to about 661 feet, and that superimposed upon the natural low-water flow, assuming that we could use it all. We don't know as a matter of fact that we can use it all. This reservoir would not affect the efficiency of our plant at Long Lake during the low-water season. In percentage this reservoir will increase the efficiency of our plant at Long Lake about 30 per cent, assuming that we can use it all.

Redirect Examination.

(By Mr. GRAY.)

I mean by "Assuming that we can use it all," assuming that we don't lose the water, as we do at Spo-

(Testimony of C. S. MacCalla.)

kane; that use [550—265] depends upon having storage above that plant, and at Little Falls it depends upon having storage there.

Recross-examination.

(By Mr. ELDER.)

In regard to Spokane and Little Falls, the necessity for local storage was not so prominently brought to our attention as it has been in the last few years, when the necessity for economizing on the water has been increased. At the time I testified in the Waters case we had operated here 3 years, and our plant at Spokane some time longer than that.

[Testimony of Frank H. Feller, for Defendants (in Rebuttal).]

FRANK H. FELLER was called as a witness on the part of defendant on rebuttal and testified as follows on direct examination by Mr. BLACK:

I have no position with the plaintiff company; I have had no position with that company; I have been employed by the Washington Water Power Company in the last four or five years at different times, doing surveying on Lake Coeur d'Alene and the Spokane River, and the ranches up on these rivers. I am not sure that I testified for them in all the cases that have been presented to the Court regarding the overflowage of lands; I know I have been in a good many; I remember taking some elevations at the throat of the Spokane River at the bridge which crosses to the Blackwell Mill, also continuing on down the river to the railroad bridge. I took elevations

(Testimony of Frank H. Feller.)

of the lake just outside of the source of the river on the same day or about the same time that I took the elevation at the first bridge. I haven't my notes with me, but I think that was in November [551—266] or December, 1910; I couldn't tell what the difference in elevation of water at that time was. I think it was about two-tenths difference at the wagon bridge, and about a foot difference down at the railroad bridge; that railroad bridge is down about a mile, at La Crosse. I think the first bridge, the Blackwell bridge must be perhaps six or eight hundred feet from the source of the river; I wouldn't want to be positive that on the same day there was a difference in elevation at the lake and down at this bridge of two-tenths of a foot, that would be about 2½ inches. The water, I think, at that time would be possibly falling; I don't remember of taking measurements on September 16th of any year. I should think there would be a rise and fall of the water from the lake down to the first bridge, and a difference in August and September when the lake is practically at a stand still, in that six or eight hundred feet. Since 1907 the water at the bridge would be practically the same elevation that it is in the lake at the outlet, in September.

I have to assume from the testimony that the elevation of the old dam—the crest of the old dam was at an elevation of 16; there might be perhaps a foot of water running over the dam, a foot and a half, which would make several feet fall from the lake to the dams; there might be a majority of that fall con-

(Testimony of Frank H. Feller.)

sumed at the outlet of the lake. It would be possible that there had been a foot difference near that; I think the water is very shallow in September of any year, it is a very shallow part of the river. I do not know how deep the water now is since the dam has been [552—267] in operation, in September, between those points, I do not know approximately. I admit that since the operation of the dam the water would be deeper there than it was before with the old dam. I never have taken any measurements there in September and don't know whether there is any difference in the elevation of the water at the bridge and at the mouth of the lake, in any years since the dam was constructed.

**[Testimony of C. S. MacCalla, for Defendants
(Recalled in Rebuttal—Cross-examination).]**

C. S. MacCALLA was recalled and testified on cross-examination by Mr. ELDER:

In testifying in regard to the low-water flow at Post Falls, we have never had any measurements at Post Falls, we determined it from the best evidence that we could get, as to the difference in flow between the flow at Spokane, as shown by the Government gauge, and the flow at Post Falls, and the best figures we could get on it was about 200 second-feet less than low-water at Post Falls. My evidence was based on the best investigation, the best evidence we could get as to what that difference was; it was approximate. At that time we made no measurements at Post Falls.

Thereupon defendant offered in evidence measurement of the water of the Spokane River for the year

(Testimony of C. S. MacCalla.)

1904 on September 16th at Green Acres, as follows:

“Width 254 feet; area of section 1,181 feet; mean velocity feet per second .62; discharge 727.”

Thereupon the following exhibit was offered in evidence by defendant:

“September 16th, Spokane River Old Fort Sherman, at the [553—268] outlet of Coeur d’Alene Lake, width, 450; area of section 1,043 feet; feet per second, mean velocity, .93; gauge height 2,119; discharge 1909.”

The receipt in evidence of this exhibit was objected to by plaintiff, objection sustained, and the Court stated that he would let it go in the record for use by the Appellate Court.

C. S. MacCALLA was recalled and upon direct examination by Mr. GRAY:

There is a natural waterfall at Post Falls; there is a granite reef or ledge which runs across the country at Post Falls that deflects the water to the surface; a salt reef running across the valley. I have made observations below Post Falls and above Spokane Falls to ascertain whether or not the water which passes over Post Falls remains in the channel of the Spokane River, or departs into the surface around on the sides. One night, just for the purpose of ascertaining that, we shut down our plant, and the flow of the river was very materially reduced, and at a point somewhere near Green Acres, below Green Acres, the river bed practically dried up. The sound of running water was very evident, and distinctly heard underground, under the rocks, but on

(Testimony of C. S. MacCalla.)

the surface the river was practically dry. A study of the geology of the valley shows very clearly that the water, after passing over the granite reef at Post Falls, more or less of it disappears and flows underground. We observed this first in the construction of our plant at Post Falls where he had two of the channels of [554—269] the river coffer-dammed off where we were building the power station. We had three coffer-dams, two in the upstream, in the two channels, the south and the middle channel, and one downstream, where these two channels come together, and there was a certain amount of leakage, of course, through these dams, in fact through the lower coffer-dam there was a steady stream, a considerable stream of water leaking around through the gravel and underneath and around the edges. We installed a pumping plant there to pump this out. We never ran that after we once got the river bed pumped out, although the stream continued to flow for perhaps 100 feet, with the water standing outside of the coffer dam to a depth of six or eight feet; and this stream disappeared; apparently there was some underground channel. Then the character of that soil is sand and gravel. We arrived at a 200 feet difference, or at least we checked that, by the manipulation of our wheels at Post Falls. For instance we bought those wheels—or we made tests of service on those wheels to determine the difference between wheels that the two different makers have, and in making these efficiency tests we can reverse the operation until, having gotten the efficiency for

(Testimony of C. S. MacCalla.)

certain loads we can use the waterwheels as an actual water meter, and tests made at this time confirmed our calculations of approximately 200 feet in low water season difference in flow between Post Falls and Spokane.

The water that flows out into the country below the Post Falls dam gets back into the river in the vicinity of Spokane, above the granite ledge. I knew where the pumping [555—270] plant of that city is. I think part of that water gets in even below that pumping plant.

We had a very material evidence along that score at the time we were constructing our steam power station, which is below the city pumping plant, in the city limits of Spokane, and above the falls. We were excavating there for tunnels to get our condensing water into the tunnel from the river. The Stead power station is situated just across the street on the river bank, the street intervening between the plant and the river, and the water level in this excavation cut off from the river was materially lower than the level in the river; the water ran through and seeped into the hole without filling it up, although the water level in the hole was below the water level in the river.

The city of Spokane gets its water supply from the underground flow in the vicinity of the pumping station. It comes from wells, not from the river; those wells are several 100 feet away, I should say.

(Testimony of C. S. MacCalla.)

Cross-examination.

(By Mr. ELDER.)

They don't get any of it from the river—this water is of an entirely different character from the water in the river, not the same kind of water at all. The water in flowing through the gravel, picks up, of course, a lot of mineral salts, the lime salts, magnesia, from the underground flow. It is correct that although we were constructing a very valuable plant at Post Falls we never made any measurements of the quantity of water. [556—271]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-Officio Tax Collector of Kootenai
County, Idaho,

Defendants.

IT IS HEREBY CERTIFIED that the foregoing transcript is a full, true and complete transcript of the testimony and proceedings had upon the trial of the above-entitled action, and that the said transcript contains all of the evidence and all of the proceedings had upon the trial of said action, and

may be settled and approved by the Judge of the above-entitled court.

JOHN P. GRAY,

Attorney for Plaintiff.

ROBERT H. ELDER,

N. D. WERNETTE,

Attorneys for Defendants. [557]

[Certificate of Dietrich, D. J., Re Transcript of
Testimony etc.]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

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PANY, a Corporation,

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and FRED E. WONNACOTT, as Assessor
and Ex-Officio Tax Collector of Kootenai
County, Idaho,

Defendants.

United States of America,
District of Idaho,—ss.

The undersigned Judge of the District Court of the United States for the District of Idaho, Northern Division, being the Judge who tried the above-entitled action, does hereby certify that the foregoing statement contains, in substance, all of the evidence introduced upon the trial of said action (except the exhibits introduced on the trial thereof

to be separately certified by the clerk of said court, and by him transmitted to the United States Circuit Court of Appeals for the Ninth Circuit), and also contains, in substance, all of the proceedings had on the trial of said action and the same is hereby approved and allowed and is deemed adequate to present for review any ruling appearing thereon to have been excepted to by or deemed excepted to on appeal.

July 26, 1913,

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Filed July 28, 1913. A. L. Richardson, Clerk. [558]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-Officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Opinion.

Feb. 24, 1913.

JOHN P. GRAY and FRANK T. POST, Attorneys
for Plaintiff,

N. D. WERNETTE and ROBT. H. ELDER, Attor-
neys for Defendants.

DIETRICH, District Judge:

The plaintiff, with headquarters at Spokane, Washington, is engaged in the business of developing and distributing electrical energy for power and lighting purposes in Eastern Washington and Northern Idaho. One of its power plants is at Post Falls, within the defendant county, and it brings this suit to enjoin the collection of the taxes (in part) levied upon this plant for the year 1911.

The gist of its complaint is that the assessment is both unequal and excessive. The bill contains averments of the existence of other conditions essential to the jurisdiction of federal courts to grant relief against the enforcement of [559] state taxes, but they are all incidental to the fundamental proposition of an over-valuation. It is familiar law that where it is sought to enjoin the collection of a tax for the reason alone that it is excessive it is not sufficient to aver merely an over-valuation, but it must further appear that the over-valuation was fraudulently or intentionally made, or was the result of the adoption of an illegal system or mode of valuation necessarily resulting in a discrimination prejudicial to the plaintiff. It is sometimes said that courts will grant relief in cases where the

valuation is grossly in excess of the taxable value, but this is only another way of stating that the over-valuation must be the result of fraud; a malicious or fraudulent intent may be inferred from a grossly excessive valuation, or from the recklessness upon the part of the assessing officers implying a willingness to do the taxpayer an injustice. 37 Cyc. 1263. *Chicago etc. R. Co. vs. Babcock*, 204 U. S. 585.

Apparently there is no substantial controversy between the parties touching these controlling principles of law, and the real issues are of fact only. In brief, the bill sets forth not only that the plaintiff's property was grossly overvalued, but that the county officers charged with the duty of making assessments and equalizing the same in Kootenai County, knowingly, wilfully, and systematically valued property other than the plaintiff's at from thirty to sixty per cent of its actual value, while assessing that of the plaintiff at more than twice its actual value. These officers, it is represented, not only acted recklessly, but deliberately declined to investigate the facts touching the value of plaintiff's property, and were influenced by a local feeling of hostility toward plaintiff; it is further alleged that one of the members of the county board of equalization was actuated by a personal feeling of malice or ill will. Complaint is also made that while the plaintiff's [560] property is an indivisible unit, it was assessed in separate parcels. The assessments as established by the county officers were substantially as follows.

On page 11, Book 1 of Deeds, situate in Sec. 3 and 4, Twp. 50, Range 5; and on pages 412 and 413, Book "U" of Deeds, in Sec. 4, Twp. 50, R. 5	\$1,080,000.00
On pages 460, 461, 462, 463, 464 and 465, Book 9 of Deeds, in Sec. 3, Twp. 50, Range 5	75,000.00
On page 97, Book 34 of Deeds, Grist- mill in Sec. 3, Twp. 50, Range 5	40,000.00
Bear-trap dam and small dam at Post Falls	562,500.00
Building and excavation, Sec. 4, Twp. 50, R. 5	223,000.00
Machinery on Island #2, Sec. 4, Twp. 50, R. 5.....	350,000.00
Concrete foundation and dams, Sec. 4, Twp. 50, Range 5,	150,000.00
Railway spur and bridge	48,750.00
	<hr/>
	\$2,529,250.00

Later all valuations upon real estate in Kootenai County, including that in controversy, were reduced fifteen per cent by the State Board of Equalization.

Turning now to the evidence, I am inclined to think that the allegation that property generally in the county was assessed at only from thirty to sixty per cent of its actual cash value is not sustained. While it may be conceded that there is sufficient evidence to warrant a strong suspicion that as a rule the assessor did not in fact list property at its

real value, and that he must have known that he was under-valuing it, it is too fragmentary and too meager to justify the court in finding as a fact that the assessor adopted, or that the board of equalization recognized or acquiesced in, a uniform or general system of under-valuation. The objection that separate valuations were placed upon the several parts of the plaintiff's property all of which constitute a single plant, is not seriously urged in the argument, and whatever view may be taken of the propriety of such a method, in itself it does not furnish ground for equitable relief. [561]

Two questions therefore remain for consideration: (1) Were the valuations placed upon the plaintiff's property by the assessor, and confirmed by the board of equalization, excessive? And (2), if so, was such over-valuation the result of such conduct on the part of the assessing officers as to warrant injunctive relief?

Primarily it may be observed that the value of the property in controversy is not susceptible of any absolutely accurate estimate; there is no fixed standard by which it may be measured. Other factors besides the mere cost of machinery, dams, and other artificial structures enter into the calculation, chief of which perhaps is the site, or the natural advantage controlled thereby; also the fact that the property assessed in the defendant county is not a complete unit, but is only a constituent part of a larger system. In view of these considerations, obviously so long as the assessing officers do not act wilfully or maliciously there must be con-

ceded to them a greater discretion or a wider margin of unavoidable error than in cases where the value of the property assessed can be readily referred to a market price for a standard. But it is not to be understood that merely because a proper valuation is accompanied with difficulty and entails considerable labor, officers are relieved from employing means reasonably adequate to enable them to act intelligently.

Three different methods are suggested in the record for reaching the value of property of this character, no one of which, however, is claimed to be infallible or entirely accurate, or even absolutely complete. The first of these is primarily a resort to the original cost of the plant. But whether or not cost furnishes a fair standard in any particular case depends upon a great many contingencies, some of which are easily reduced to definite form, but others of which necessarily [562] remain the subject of considerable conjecture. If the plant is comparatively new, and purchases have been made in the open market, and good judgment has been used in selecting the machinery and in its installation, cost may be a fair measure of the present value, after making reasonable allowance for depreciation, and, of course, assuming that the enterprise as a whole is a reasonably feasible one. From a financial standpoint, the whole project, regardless of the intrinsic value of the physical plant as a means for generating power, may be practically worthless, owing to a lack of demand for the product of unexpected competition which can-

not be met; or, upon the other hand, the value may be greatly in excess of actual cost, owing to a demand which has not been anticipated, and to conditions enabling the owner to charge for the output a price in excess of that which was originally contemplated.

A second method is to ascertain the value of the existing plant by calculating the cost of its reproduction. Such method, however, is obviously only partial, for the reason that necessarily it fails to embrace the present value of the site or natural resource to utilize which the plant was constructed.

The other method suggested is the capitalization, at a fair rate of interest, of the probable net income, after making due allowance for upkeep and depreciation. While dependent upon certain estimates, and subject to certain contingencies, upon the whole I am inclined to the view that this is the most adequate and the safest of the three methods, and I have therefore used it as the basis of the conclusions which I have reached, although not entirely to the exclusion of the other two. In a measure the facts ascertained in an inquiry, into the original cost and into the cost of reproduction throw light upon the calculations involved in this method, and operate as [563] a check against unfounded assumptions which might otherwise be indulged.

Inasmuch as neither the original cost nor the cost of reproduction is to be used as the basis of determining the present value, the evidence under these two heads need not be detailed, nor is it necessary to make a precise finding in response to either in-

quiry. It is sufficient to say that upon credible testimony it appears that the actual cost of the artificial plant, all of which has been constructed within the last six years, was between \$900,000.00 and \$1,000,000.00, and the cost of all of the property embraced within the assessment under consideration, including site, water rights, and all other natural advantages, did not exceed \$1,200,000.00, and was probably more nearly \$1,100,000.00. It further satisfactorily appears that the artificial plant could be reproduced new for substantially what it cost. The site, considered strictly as a site, that is, merely as so many acres of land, apart from its relation to the water in Coeur d'Alene Lake and the Spokane River, has probably not increased in value to any great extent since it was purchased by the plaintiff; there has been no growth or change in local conditions such as would materially affect the value of the land for any other purpose than as controlling the utilization of the water for power purposes. Hence the uncertain, elastic factor in the value of the plant as a whole is primarily that of the natural advantage of water right, to which the land owned by the plaintiff is the key, and apparently there is no means by which the value of this factor can be intelligently estimated except by including it in the plant as a whole, and capitalizing the value thereof by the method already suggested.

[564] The contention is made that for the purposes of taxation the property in controversy should be assessed at only such value as it would have if severed from the general system of which it is a

part, but such a theory is thought to be erroneous. To a degree there is a relation of interdependence between this plant and other plants belonging to the plaintiff, constituting an entire system, and the value of any specific part is not necessarily such value as it would have if the system were dismembered. For many possible reasons a branch railroad might have very little value as an independent concern, although possessing great value as a part of a general system. A common reason is that the overhead charges of independent operation of a small enterprise are wholly out of proportion to the income. Under the theory of the plaintiff it would be necessary to value this plant upon the assumption that it is severed from the Spokane plant, and in the state of Washington it would be necessary to value the Spokane plant upon the assumption that it sustains no relation to this plant, and so with the other parts of the system. The result of such a course would be that the aggregate of all of the several assessed valuations would be considerably less than the value of the whole, considered as a unit. In other words, because of the fortuitous circumstance that its property is situated in more than one revenue district, the plaintiff would pay taxes upon a smaller aggregate valuation than if its entire system were within a single revenue district. There is considerable testimony tending to show that by reason of the impounding of the waters of Coeur d'Alene Lake other parts of the plaintiff's system are greatly benefited during certain months of the year. Upon the record before us, it would

be impracticable to estimate the value of such advantage in dollars and cents, and it is not [565] clear that it would be possible upon any available evidence to reduce such additional value to figures, but while it is intangible I do not think that it can properly be entirely neglected. It is a condition or circumstance of which a contemplating purchaser would take cognizance, and by which he would, to some extent at least, be influenced. So in considering the cost of superintendence or management, it is not thought that it would be just to charge up against the revenues of the Post Falls plant the estimated cost of independent operation; the plant should bear only its fair proportion of the cost of managing the entire system.

With these general observations, we are brought to a consideration of the value of the plant as disclosed by the capitalization of its net income. For the sake of convenience I shall refer to the data contained in Exhibit 18, which is a detailed estimate made and submitted by the witness Cory. His calculations are not substantially unlike those of the witness Wiley, both called as experts on behalf of the plaintiff, and are apparently based upon practically the same assumption of facts. In the first place, the gross revenues of the plant are taken for each of the three years, 1908, 1909 and 1910, as shown by the testimony of other witnesses. This revenue is made up of the actual receipts of the plaintiff for power sold to consumers in Idaho, and a credit at a given rate for the residue of the power not sold to outside consumers, but transmitted to the plaintiff's Spokane

plant and there distributed by it. Against this income an annual charge is made for depreciation, maintenance, operation, taxes, and management. Confessedly the line of demarcation between charges on account of depreciation and charges on account of maintenance is not always clear. So also the classification of expenses of operation and of management are not always free from difficulty; [566] a difference of opinion might very well arise as to whether a given item should go into one of these classes or the other. The witness Cory undertook to define the several terms of classification, but from his testimony as a whole it is obvious that in practice the definitions are often difficult of application. However, we are not here concerned with nice distinctions between terms of classification. There can be no controversy that in ascertaining the net income of the plant allowance should be made for taxes, for the cost of supervision or management, for necessary operating expenses, for maintenance or repairs, and for depreciation. It is only important that the aggregate allowed for all of these purposes shall be sufficient, and only sufficient, to cover all expenses necessarily incident to the operation of the plant, to the end that the gross revenue may be continuously earned and the efficiency and present value of the plant perpetually maintained. So far as concerns the present inquiry, therefore, if we make the proper allowances, it is wholly immaterial whether they be embraced in one class or the other.

GROSS REVENUE.

In ascertaining the amount of the gross revenue,

I have followed substantially the calculations contained in Exhibit 18, which I find to be in accordance with the testimony, with the single exception that I make an additional credit to revenue, on account of the power delivered to Martin and Strathern, at the same rate, and with the same deductions for line loss and conversion, as in the case of the power delivered to the plaintiff for its use in Spokane. As shown by these calculations, the aggregate revenue for the years 1908, 1909, and 1910, including credits on account of the Martin and Strathern power is \$984,187.82, or an annual average of \$328,062.60.

[567]

DEDUCTIONS FOR DEPRECIATION, ETC.

Considering together the actual expense for the years 1908, 1909, and 1910, and the estimates of expert witnesses, in the light of general experience, I find that the following deductions from the gross revenue should be made, averaged for the three named:

1. Property in Kootenai County.

Dams.

Depreciation 1%	\$ 3,352.82
Maintenance	3,000.00

Buildings.

Depreciation 2%	1,837.84
Maintenance	1,500.00

Machinery.

Depreciation 4%	16,109.52
Maintenance	7,500.00

Transmission lines.

Depreciation 6%	9,600.00
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632 *The Washington Water Power Company vs.*

Maintenance	8,000.00
Switching Station.	
Depreciation	773.00
Maintenance	773.00
Operation	8,735.54
Taxes	26,001.29
2. Property in Shoshone County.	
Substations.	
Depreciation	7,000.00
Maintenance	4,000.00
Transmission lines.	
Depreciation 6%	10,149.00
Maintenance	7,470.66
Taxes	2,294.82
Operation	3,917.00
3. Property in both counties.	
Management	15,000.00
<hr/>	
Total on account of deductions.....	\$137,014.49
Gross revenue	\$328,062.60
Gross deductions	137,014.49
<hr/>	
Annual net revenues.....	\$191,048.11
Annual net revenue, capitalized at	
the rate of 8%	\$2,388,101.37
Property included in this capitalization other than	
that covered by the assessment in controversy:	
[568]	
Shoshone County property, depreciated	
value	\$265,585.00
Overflow lands, Kootenai County.....	200,000.00

Pole-lines, Kootenai County	183,000.00
Substations at Cataldo, depreciated value	20,880.00
<hr/>	
Total.....	\$669,465.00

Deducting this amount of \$669,465.00 from the total capitalized value of \$2,388,101.37 leaves \$1,718,-636.37, as the value of the property covered by the assessment under consideration.

Now, a brief explanation of the foregoing calculation as compared with that contained in Exhibit 18. While in the main following the same general course as was pursued by the witness Cory, I have averaged each item of expense or deduction for the three years, instead of making a detailed tabulation for each of the three years and then averaging the yearly totals; the difference in method does not in itself involve any difference in fact or in result; the difference in results is due to the adoption and use of some different and some additional factors.

As to the gross revenues, it is thought that there must be added to the amounts taken into consideration in the exhibit, a reasonable credit for the power delivered to Martin and Strathern. Briefly referring to this feature of the case, it appears that as a partial consideration for a portion of the site of the Post Falls plant the plaintiff entered into two several contracts with Strathern and Martin, or their predecessors, owners of lands at Post Falls, by which in substance it agreed annually to furnish to Strathern 250 horse-power, and to Martin 125 horse-power, free of charge. In compliance with the terms

of these contracts, during the years 1908, 1909, and 1910, the plaintiff did furnish, at its switchboard, power in an amount on the average for each of these years, which, if credited upon the same terms for which the plaintiff has given credit for the power [569] taken by it and used at Spokane, would have yielded a revenue of \$6,117.53 annually. While in one sense it is apparently true that the plaintiff receives no actual present return from this source, it is clear I think that in ascertaining the taxable value of the plant by capitalizing its net revenue, this item must be credited as a part of the gross income. As already suggested, the right to receive this power was granted to Martin and Strathern by the plaintiff as a part of the consideration for the purchase of the site. True, the obligation to furnish the power is binding upon the plaintiff's successors in interest, and in a sense may be regarded as a charge against, or a lien upon, the land, but the plaintiff is the sole owner of the entire plant and the title thereto, and even if the obligation to furnish the power be held to be a lien upon, or a charge against, the property, the situation is not substantially different from what it would be if, instead of granting this right as a part of the consideration, the plaintiff had executed a *true* deed or mortgage upon the property, and by means thereof borrowed the money, and paid Martin and Strathern in cash for the site. The annual interest upon the mortgage or the trust deed would correspond to the value of the annual use of the 375 horse-power; in either alternative the obligation is against the plant, the only difference being that in

the one case the use of a certain amount of power is credited to the obligee, and in the other case the revenue derived from the use of substantially the same amount of power is paid in the form of interest. Suppose that instead of borrowing money, and paying interest on it, for the purpose of procuring the necessary machinery for the plant, the plaintiff had granted to the vendor of the machinery the perpetual use of a certain amount of power in full payment for the machinery, it would hardly be contended that the revenue-bearing value of such power should not be considered in capitalizing the net revenue of [570] the plant. The defendant county has the right to assess the plant, and the entire plant, at its full cash value, and it is unimportant what obligations the plaintiff may sustain to others in relation thereto, or in relation to the output thereof; we must consider the value of the plant as a whole, in the light of its full revenue-producing capacity. Indeed, even if Strathern and Martin were deemed to be part owners of the plant, or to hold some interest therein, the consideration would be unimportant. It is the taxable value of the plant in its entirety, the amount of taxes which the plant should pay, with which we are concerned, and it is quite immaterial whether the obligation to pay the taxes rests solely upon the plaintiff, or upon it and other persons. I have therefore added to the gross revenues as shown by Exhibit 18 this item of \$6,117.53.

Now, passing to the other side of the account, I have, in the first place, generally reduced the several allowances for depreciation. It would not be prac-

licable to go into detail, but for the reason for such reduction may be fairly well illustrated by the consideration of a single item. In the exhibit, for instance, there is an allowance for depreciation upon dams, at the rate of two per cent, or \$6,705.64, per annum. This percentage is based upon the assumption that there will be a total depreciation of the dams at the end of the period of fifty years; that they will then be worthless. If, as all of the expert witnesses who testified upon behalf of the plaintiff assume, the life of the dams will be fifty years, this percentage of allowance for depreciation is clearly indefensible. The dams are of concrete, and so far as their physical existence is concerned it is conceded that, if not everlasting, their life is greatly in excess of the fifty years; the fifty-year period is adopted because it is estimated that upon the average and in the long run, by [571] reason of changes in the art, or owing to some other conditions, the structures may become inadequate or unsuitable for use after the lapse of fifty years. Upon this assumption the structures will efficiently serve the purpose for which they were built for the full period. It must be borne in mind that depreciation, as the term is here used, is entirely distinct from maintenance. The dams, including the gates and all the appurtenances thereof, are to be kept in perfect repair, and are to be fully maintained by expenses charged to the maintenance fund, for which adequate provision is made out of the annual revenues. If properly maintained, in the sense in which that term seems to have been used by the expert witnesses, a structure or machine is kept

in operating condition, "so that its working condition will be as nearly as possible one hundred per cent of its original working condition." Now, under these conditions, if two per cent of the cost of the dams were set aside each year for fifty years, and the fund thus created were at all times to lie idle, the percentage of depreciation would obviously be sufficient, and just sufficient, to cover the depreciation, but whatever may be said in support of the rule of "straight line" depreciation, (as it is designated in the record), in its application to machinery, it is thought to be wholly inapplicable to structures like these. It is not the case of a complex system of machinery where the life of one part is much shorter than the life of another, and where therefore it may become necessary after the lapse of a comparatively short period to resort to the depreciation fund for the purpose of replacing worn out or obsolete or inadequate parts, and where consequently there may be no very large accumulation in the depreciation fund. In the case of the dams the contingency is very remote where it would be necessary to draw upon the fund until the expiration of the full period, and therefore in determining the percentage of depreciation which should be [572] allowed, proper place must be given to the consideration that the funds realized from such deductions from year to year may be made fruitful by reinvestment or by bearing interest. If at the end of the specified period the deductions, with proper interest added thereto, aggregate and equal the value of the structure, that is a just allowance. In this view I have

made an allowance of only one per cent instead of two, for depreciation. As already suggested, the other classes of property involved do not present the same considerations, or at least to the same degree, and smaller reductions have been made in the percentages employed in Exhibit 18.

Some slight changes have also been made in the estimates for maintenance, but in the main they are the same. The item covering operation is simply the average of the actual expenses upon that account for the three years under consideration; and the same comment may be made upon the item of taxes. It may, of course, be true that the charge for taxes thus adopted is considerably less than the taxes will necessarily be upon the valuation as it shall be fixed for 1911, and possible for subsequent years, but that may be true of any item, for the reason that the general business conditions of the plaintiff may change from year to year; the gross revenues for 1911 may be very much larger than for any preceding year, for it appears that they have materially increased during the years 1908, 1909, and 1910.

The item of \$773.00, both for the depreciation and for maintenance, appears upon its face to be less than the corresponding item in Exhibit 18, but it is so only because the calculation here made is upon the basis of an average for the three years, whereas the corresponding items in Exhibit 18 appear only in two of the three years; but obviously the general result is the same. [573]

There seems to be some discrepancy between the items shown by Exhibit 18, covering taxes in Sho-

shone County, and the testimony, but there is some confusion in the testimony, and I have adopted as correct the showing made by the exhibit.

The only testimony as to a proper charge for management is based upon the hypothesis of an independent management for the Post Falls plant. The estimated amount, based upon this theory, namely, \$21,400.00, is adopted in the exhibit, but, as already suggested, I am unable to accept this theory. There should be charged against this plant only a fair proportion of the expenses of management for the entire system; what that is is not shown by the evidence, and in the absence of definite information I have adopted \$15,000.00 as being a fair amount to allow upon this account.

The deductions on account of property embraced in the entire system producing the gross revenue, but which is either in Shoshone County, and there taxed, or in Kootenai County, and taxed separately, and hence not embraced in the assessment under consideration, are substantially as set forth in Exhibit 18.

In the exhibit the net revenue has been capitalized upon the basis of ten per cent interest. I have adopted eight per cent, as a reasonable rate. The plaintiff conceding that ordinarily eight per cent would be reasonable, attempts to justify the additional two per cent upon the assumption that the business in which it is engaged is extrahazardous, but in this view I am unable to concur. The evidence shows that in eastern Washington and Northern Idaho the going rate of interest upon farm loans

is approximately eight per cent, and the interest upon other kinds of loans is various. But it must be borne in mind that in all investments, and indeed in the case of farm loans, there is a degree of hazard which is covered by the rate of interest charged. What is ordinarily called interest not only embraces [574] interest in the scientific sense, but also covers the risk of a loss of the principal in whole or in part. It may also be added that there is usually involved in the interest charge on farm loans something for compensation for the service required in making such loans, in supervising them, and in collecting the interest and principal as they become due, and no such service is involved in the interest charge here. It is true that a large part of the plaintiff's output is sold to the mines in North Idaho, and mining is usually regarded as lacking in the stability which characterizes most other classes of business. I put aside the suggestion that by reason of the lack of success of some of the mining enterprises to which power is delivered there are losses, for the reason that the revenue upon which the calculation is made is the revenue actually collected and received by the plaintiff, and does not take account of losses due to the insolvency of the consumers. True, there is some merit in the contention that the life of a mining industry in any community is necessarily uncertain, and that therefore the time may come in the near future when there will be a diminution of demand for the power which is now consumed in the mines of North Idaho. But, conceding this possibility, I am satis-

fied that the peril of an insufficient demand for the plaintiff's output is more fanciful than real. Conditions may, and doubtless will, change in the Coeur d'Alene mines, but no immediate or sudden cessation of activity can be reasonably anticipated; and as the demand decreases for power in mining operations, it seems highly probable that it will increase for other purposes. The resources of the territory in which this plant is located are rich and varied, and only partially developed; the population is small, but growing. With the ever-multiplying uses to which electrical energy is being applied, it is difficult to believe that in such [575] a community there will be a diminution of need. And if appearances are not deceiving, the plaintiff entertains no gloomy view of the future, for, at great expense, it has been acquiring other sites, and is developing other plants. Moreover, the relation of this plant (including the great reservoir which it creates in Lake Coeur d'Alene), to the important market in the city of Spokane for light and power, which the plaintiff supplies and apparently controls, while its value may not be measured in dollars and cents, unquestionably makes a substantial contribution to the stability and safety of the entire investment at Post Falls.

There remains the important question whether or not the conditions are such as to justify an injunction against the enforcement of a tax which is found to be excessive. There is very little in the record tending to support the charge that the assessing officers acted fraudulently or wilfully in overvalu-

ing the property, other than the mere fact of the overvaluation itself. That in 1911 there prevailed some local feeling of unfriendliness, if not of ill will, toward plaintiff, may be fairly inferred, and that one member of the board of equalization was, by reason of his personal controversies with the plaintiff, somewhat prejudiced, is not improbable, but aside from these circumstances there is nothing to impeach the good faith of the officers, unless the assessment, because of the essential unreasonableness, is of itself sufficient to discredit them. But it must be borne in mind that while I have reached the conclusion that \$1,718,636.37 is a fair estimate of the value of the property in 1911, many of the factors involved in the process by which this conclusion was reached are admittedly uncertain, and are in a measure susceptible to an honest [576] difference of opinion. The evidence is extremely meager upon certain features of the case, and with the facts disclosed by the record, supplemented by such other information as he may have acquired in the course of his investigations, Professor Cory, who was brought into the case as a specialist of much learning and experience, hesitated, if he did not wholly decline to express an unqualified opinion as to the actual value of the property, and Mr. Wiley, whose standing as an hydraulic engineer is unquestioned, in testifying upon this phase of the case, answered only a hypothetical question. Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenance or for some other ac-

count, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910 greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deductions on account of increased expense, it is apparent that upon the record before us reasonable men might reach different conclusions, and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence; and it must be remembered that the assessor and board of equalization were not possessed of much of the information of which we have the benefit. It is therefore thought that if we had nothing but the total or aggregate valuation made by the assessor, it would not be a case in which a court could afford relief against an excessive assessment; of course, if the county officers had had the light which is now shed upon the subject by the evidence before us, a different view might be taken. [577]

But in another aspect of the case, a certain measure of relief may, and properly should, be afforded to plaintiff. As we have seen, the property was not assessed as a whole, but separate valuations were placed upon the several parcels, some of which embrace the lands, and others the improvements thereon. While there is wide room

for a difference of opinion touching the value of the lands, in view of the fact that they control an important power site, the improvements are reasonably susceptible to a just and approximately accurate appraisalment. Assuming that the project is financially feasible, the dams, buildings, and machinery are worth substantially what it would cost to replace them. A competent engineer could, without great labor or expense of time, have informed himself sufficiently to give to the county officers a reasonably close estimate of the probable cost of reproducing the plant, and more especially the dam; or the plaintiff could have been called upon to produce its books of account disclosing the original cost thereof. Neither course was pursued, and admittedly no intelligent effort was made to ascertain the value. The assessor testifies that he recommended to the county commissioners the employment of competent engineers, but the recommendation was for some reason not acted upon, and, the time for assessment being about to expire, he, the assessor, wholly without training or experience qualifying him to make an intelligent estimate, adopted the valuations hereinbefore set forth; of necessity they were mere guesses. The three dams in the aggregate are assessed at \$712,500.00. From the evidence it quite conclusively appears that they could be reproduced new for less than half of that amount. The exact figures given by Mr. Wiley are \$326,271.00, so that the difference between the assessed value and what I am inclined to think should be held to be the actual value is [578] \$386,229.00.

While he was upon the witness stand the assessor attempted to justify the valuation upon the ground that the dams contributed to a conservation of the water in Coeur d'Alene Lake as a reservoir, but the value of the site,—the value of the natural advantage controlled by the plaintiff through its ownership of the site,—pertains to the land, and is embraced within the assessment upon the land. The legal status of the dam for assessment purposes is like that of a dwelling-house or business building upon a city lot. The lot may have a value because of its location, but the location contributes nothing to the value of the building, considered apart from the lot. While here the assessments upon the artificial structures and machinery, other than the dams and the railroad track and bridge, are not in all cases intelligently made, their aggregate bears some relation to the actual value of the property, and they should not be interfered with; but the over valuations upon the dams and railway track are so gross, and the manner of making them was so unreasonable, that it is thought the plaintiff is entitled to protection against the collection of the excess tax. The railway spur and bridge, costing less than \$20,000.00, are assessed at \$48,750. The over-valuation on the dams is confined to the item "Bear-trap dam and small dam at Post Falls, \$562,500.00"; there is no over-valuation upon the middle dam. The total excess valuation on the dams, namely, \$386,229.00, should therefore be deducted from the item of \$562,500.00, and accordingly this item will be reduced to \$176,271.00. There will also

be deducted from the item of \$48,750.00, for railway spur and bridge, \$28,954.61, leaving \$19,795.39, the original cost of the structures, as the corrected valuation. [579]

With the exception of the reduction in these two items, the relief prayed for by the plaintiff will be denied. While it is realized that such a decree may not do exact justice between the parties, it is not impossible that the plaintiff's assessment, as modified, is not more equal than that of many other taxpayers in the county. In the main the administration of the revenue laws must be left to the honesty, intelligence and fairness of the administrative officers, and ordinary inequalities cannot be corrected by the courts. If I rightly construe the complaint, the plaintiff has the benefit of a 15 per cent reduction made by the State Board upon the real estate valuations, so that, with the modifications herein provided for, the net valuation upon which it must pay taxes is not greatly in excess of the actual value of its property. As already intimated, there may be an inequality due to the under-valuation of other property in the county, but in the absence of more complete proofs, the extent of such discrimination cannot be determined.

The solicitors for the complainant are directed to prepare a decree in accordance with the foregoing views, without unnecessary delay, and after submitting it for approval to opposing counsel, they may transmit it to me, in care of the Clerk of the Circuit Court of Appeals, at San Francisco.

Endorsed]: Filed February 24, 1913. A. L. Richardson, Clerk. [580]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho.

Defendants.

Decree.

This cause came on to be heard at a previous stated term and was argued by counsel, and thereupon, upon consideration thereof, it is

ORDERED, ADJUDGED AND DECREED, that, inclusive of penalties and interest to the date hereof, there is due from the plaintiff to the defendant county, on account of taxes in said county for the year 1911, upon the plaintiff's property situate in Kootenai County, Idaho, and described in the complaint, a balance of \$12,685.00 (\$20,000.00 having heretofore been paid); that the plaintiff shall pay, and the defendant shall receive and accept said balance, with interest thereon from the date hereof at the rate of seven per cent per annum, in full payment and satisfaction for such taxes, and the said taxes shall thereupon be satisfied of record, and the defendants and each of them and their successors be

perpetually enjoined from selling the property of the plaintiff described in the bill of complaint for and on account of said taxes or attempting in any manner to collect any further sum on account of said taxes. The temporary injunction heretofore issued herein and now existing shall terminate upon and no [581] longer be effective after May 26, 1913. Neither party is given costs.

Dated this tenth day of May, 1913.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 10, 1913. A. L. Richardson, Clerk. [582]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho.

Defendants.

Order [Continuing Injunction].

The injunction heretofore issued in this case and by the final decree herein continued in effect until May 26, 1913, is hereby continued in effect to

and including the 28th day of May, 1913.

This order is made upon the consent of the parties in open court.

Dated this 26th day of May, 1913.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 26th, 1913. A. L. Richardson, Clerk. [583]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

**Petition for Order Allowing Appeal and Order Con-
tinuing Injunction During the Pendency of the
Appeal.**

To the Honorable the Judge of the United States
District Court for the District of Idaho, North-
ern Division:

The above-named complainant, The Washington
Water Power Company, feeling itself aggrieved by
the decree made and entered in the above-entitled court

in the above-entitled cause on the 10th day of May, 1913, being the decree on the merits herein, hereby prays for the allowance of an appeal from said decree and from each and every part thereof to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors annexed hereto and which is filed herewith, and that a transcript of the record and proceedings upon which said decree was rendered may be sent, duly authenticated to the said Circuit Court of Appeals, under and according to the laws of the United States in such case made and provided, and complainant further prays the Court for an order continuing the injunction heretofore granted by the Court during the pendency of the appeal; restraining and enjoining the defendants from the sale of the property of the complainant for taxes for the year 1911, said order to be made on such terms [584] as to bonds or otherwise as the Court may consider proper for the security of the defendants, and that such order continue the said injunction upon said appeal either in said Circuit Court of Appeals or in the United States Supreme Court, and the complainant hereby offers to execute such bond, with good and sufficient surety, which may be required by the Court in the premises.

F. T. POST,
JOHN P. GRAY,

Solicitors for the Complainant.

Service of the petition for order allowing appeal and for order continuing injunction pending appeal

is hereby acknowledged this — day of May, 1913.

_____,
_____,

Solicitors for Defendants.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk, [585]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COMPANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Assignment of Errors.

Comes now the complainant, and files the following assignment of errors upon which it will rely upon its appeal from the decree made by this Honorable Court, on the 10th day of May, 1913, in the above-entitled cause, and the said complainant says that the said decree in said cause is erroneous and against the just rights of the complainant for the following reasons:

I.

The Court erred in finding and holding that the

value of the property of the complainant exceeded in value the sum of \$1,018,742.75.

II.

For the reason that the evidence showed that the property of the complainant did not exceed in value the sum of \$1,018,742.75, and the Court erred in holding that the same had any value in excess of the sum of \$1,018,742.75.

III.

The Court erred in adopting the sum of eight per cent as a reasonable rate of return and in taking any sum less than the sum of 10% and in not adopting the said sum of 10% as a return upon said investment. [586]

IV.

For the reason that the evidence showed that the business in which the complainant is engaged is an extrahazardous one; that the largest part of the revenue from said power plant of the complainant comes from the transmission of electricity to a mining district approximately one hundred miles away; that the business of mining is hazardous, and for the reason that the ordinary rate of interest on farm loans in the country adjacent to the property of the complainant is 8%, and the going rate of interest from 8% to 10%, and that a reasonable rate of return upon the investment of complainant is 10%.

V.

The Court erred in taking into consideration the fact that the complainant owned other power sites in the State of Washington in arriving at the value of the real estate and power site of the complainant

and in taking into consideration anything other than the value of the plant of the complainant, and in fixing its cash value at the amount which that plant would be taken at in payment of a just debt due from a solvent debtor.

VI.

The Court erred in taking into consideration the possible benefit to certain property owned by the complainant in the State of Washington, arising from the ownership by complainant of the controlling works at Post Falls, in fixing the valuation of the property of complainant.

VII.

The Court erred in holding that the proof of the complainant does not make out a case of clear and hostile discrimination against the complainant such as would justify an injunction in the case, against the collection of any portion of the taxes complained of. [587]

VIII.

The Court should have granted the injunction against the collection of the taxes sought to be enjoined herein on the ground that they are not uniform with the tax upon all other property subject to taxation within territorial limits of Kootenai County, Idaho, and on the further ground that the payment of such taxes on complainant's property would be the payment of a higher rate of taxation than is required to be paid by other property holders within said county, and the Court erred in declining to so hold.

IX.

For the reason that the Court found as a fact based upon the earnings of the plant as allowed by the Court, upon the depreciation as allowed by the Court and other items as found by the Court, that the value of the plant did not exceed the sum of \$1,718,636.37, and that that sum represented the value of the property covered by the assessment under consideration, and then declined to give the complainant the benefit of such finding, but permitted the assessment complained of to stand as the value of the said property, and allowed no deductions from the assessment made by the said assessor, except a reduction from the assessed valuations on the dams of \$386,229, and of \$28,954.61 from the assessed valuation of a railroad spur and bridge.

X.

For the reason that even under the facts as found by the Court, the valuation of the property under consideration could not and should not have been fixed at any sum in excess of the sum of \$1,718,636.37.
[588]

XI.

The Court erred in making an additional credit to the revenue of the electric power plant of the complainant on account of power delivered to Martin and Strathern, and in holding that such power should be credited to the revenue of the said plant.

XII.

Because the evidence showed that Martin and Strathern conveyed certain lands situated adjacent to the present power site of the complainant in con-

sideration that the complainant and its successors in interest should furnish to the said Strathern and Martin a given amount of electrical horse-power perpetually, and the interest of the said Martin and Strathern are taxable and have been taxed separately, and the complainant should be credited therewith.

XIII.

The Court erred in allowing only one per cent depreciation for the dams of the complainant and in failing to allow, in arriving at the value of the property, two per cent per annum for depreciation.

XIV.

The evidence showed that the sum of two per cent per annum should be allowed for depreciation upon the dams and that any sum less than that would be unreasonable and unfair to the complainant.

XV.

The Court erred in allowing only the sum of \$15,000 as a fair and proper charge for management, and in not allowing the sum of \$21,400. [589]

XVI.

For the reason that the evidence showed that the sum of \$21,400 was a reasonable and proper charge for the management and that the said sum of \$21,400 was really less than the plant actually was or could be managed for.

XVII.

The Court erred in permitting the valuation of \$19,795.39, the original cost of a railroad spur and bridge, to remain as the assessed valuation thereof, whereas, the testimony showed that the structure

was simply put in for construction purposes and was not of a value in excess of \$4,500.

XVIII.

For the reason that the Court erred in not enjoining the collection against the complainant of any sum of taxes in excess of the amount heretofore paid under the direction of the Court, and in entering judgment against the complainant for the sum of \$12,685.

XIX.

For the reason that the Court erred in not reducing the valuation for assessment purposes of the real estate of the complainant from the sum of \$1,195,000 to the sum of \$97,986.40.

XX.

For the reason that the Court erred in not reducing the valuation upon the machinery of the complainant from the sum of \$350,000 to the sum of \$313,236.

XXI.

For the reason that the Court erred in not reducing the valuation upon the railroad spur and bridge of the complainant from the sum of \$48,750 to the sum of \$4,500. [590]

XXII.

The Court erred in not entering a perpetual injunction in favor of the complainant and against the defendants as prayed for.

XXIII.

The Court erred in refusing to enjoin and restrain the collection of the taxes complained of upon the property of the complainant.

XXIV.

The Court erred in including in its decree any penalties against complainant for failure to pay the taxes assessed against the property referred to in the bill.

F. T. POST,
JOHN P. GRAY,
Attorneys for Complainant.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk. [591]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho.

Defendants.

Order Allowing Appeal.

The above-named complainant, The Washington Water Power Company, feeling itself aggrieved by the decree and judgment entered in the above-entitled suit on the 10th day of May, 1913, doth hereby appeal from said decree and judgment to the United States Circuit Court of Appeals for the Ninth Cir-

cuit, and hereby prays that its appeal be allowed and that a transcript of the records and proceedings therein upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for review.

F. T. POST,

JOHN P. GRAY,

Solicitors for Complainant.

And now, on this 28th day of May, 1913, it is

ORDERED that the appeal prayed for is hereby allowed, the amount of the bond upon appeal be and the same is hereby fixed in the sum of \$1,000, and further proceedings in this court be stayed pending said appeal.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk. [592]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Order Continuing Injunction.

The complainant in the above-entitled cause having served and filed a petition for an order allowing an appeal from the decree in said cause to the United States Circuit Court of Appeals for the Ninth Circuit, and for an order continuing the injunction heretofore issued, notwithstanding the entry of said final decree, until the final disposition of said cause upon said appeal, and having given notice of the said application before this Court, which notice has been served upon the defendants, and the complainant and defendants having all appeared by counsel in response to said notice, and the Court being fully advised in the premises, and being of the opinion that the *status quo* of the property pending such appeal be maintained,

IT IS HEREBY ORDERED that the injunction heretofore issued in the above-entitled cause be, and the same hereby is, continued in force until the final disposition of said cause upon appeal in the said United States Circuit Court of Appeals for the Ninth Circuit or in the United States Supreme Court. This order shall be conditional upon the complainant filing within ten days after the signing of this order a good and sufficient bond, with surety or sureties to be approved by the Court or Clerk of this court, to the defendants in the penal sum of \$15,000.00, conditioned [593] upon the payment of the sum of \$12,685.00 found to be due to the defendant herein by the said decree, together with interest thereon, or such portion or part thereof as may be found due

upon the final disposition of said cause; interest to be calculated at the rate of seven per cent per annum to the date hereof, and thereafter at the rate of ten per cent per annum. And the stay is further conditioned upon the immediate filing herein of a stipulation by the plaintiff consenting that, subject to the approval of the Circuit Court of Appeals, the appeal may be docketed and heard at any place in the Circuit where said court convenes, to be designated by the defendant, at its option.

Dated May 27th, 1913.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk. [594]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,

That we, The Washington Water Power Company, a corporation, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto Kootenai County, State of Idaho, a municipal corporation, and Fred E. Wonnacott, as assessor and *ex-officio* Tax Collector of Kootenai County, Idaho, and his successor and successors in office, defendants in the above-entitled cause in the sum of \$1,000, lawful money of the United States, for the payment of which well and truly to be made we hereby bind ourselves and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 26th day of May, 1913.

WHEREAS, on the 10th day of May, 1913, a decree and judgment was entered in the above-entitled cause in the court aforesaid, in favor of the defendants and against the complainant, and the said complainant, The Washington Water Power Company, is prosecuting an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit, [595]

NOW, THEREFORE, the condition of this obligation is such that if the above-named complainant, The Washington Water Power Company, shall prosecute the same to effect, and answer all costs and damages that may be awarded against it, if it fails to make its appeal good, then this obligation shall be void; otherwise the same shall be and remain

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in full force and effect.

THE WASHINGTON WATER POWER
COMPANY,

By JOHN P. GRAY,
Its Attorney and Agent.

FIDELITY & DEPOSIT COMPANY OF
MARYLAND.

[Corporate Seal]

By ROBERT H. ELDER,
Attorney in Fact.

O. W. CHAMBERLIN,
Agent. [596]

State of Idaho,
County of Kootenai,—ss.

Robert H. Elder, being first duly sworn, on his
oath deposes and says:

That he is the attorney in fact of Fidelity and Deposit Company of Maryland, the corporation that executed the foregoing bond as surety, and was authorized to execute said bond on behalf and in the name of said corporation. That the said corporation is authorized by virtue of a full compliance with the laws of the State of Idaho to do business in said State and to execute this bond, and the said corporation is worth the sum of \$2,000 in property not exempt from execution.

ROBT. H. ELDER.

Subscribed and sworn to before me this 26th day
of May, 1913.

[Seal]

ALBERT V. CHAMBERLIN,
Notary Public.

The foregoing bond is approved both as to form and sufficiency of surety this 28th day of May, 1913.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk. [597]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

**Stipulation [Re Docketing and Hearing of Case in
Appellate Court].**

The complainant in the above-entitled action in order to comply with the condition of that certain order dated May 27, 1913, made by Frank S. Dietrich, Judge of the District Court of the United States for the District of Idaho, Northern Division, in the above-entitled cause continuing the injunction theretofore issued in said cause pending final disposition thereof, does hereby consent that subject to the approval of the United States Circuit Court of Appeals the appeal in the above-entitled action may be doc-

keted and heard at any place in the Ninth Circuit where said court convenes, to be designated by the defendants at their option.

THE WASHINGTON WATER POWER
COMPANY.

By JOHN P. GRAY.

JOHN P. GRAY,

F. T. POST,

Attorneys for Complainant.

The foregoing consent and stipulation is hereby approved as to form and sufficiently complies with the provisions of the order made by me dated May 27, 1913.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed May 28, 1913. A. L. Richardson, Clerk. [598]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That THE WASHINGTON WATER POWER COMPANY, a corporation, as principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation, as surety are held and firmly bound unto the County of Kootenai, a municipal corporation of the State of Idaho, in the sum of \$15,000, to be paid to the said Kootenai County, for the payment of which well and truly to be made, we bind ourselves and each of us, and our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 3d day of June, 1913.

WHEREAS, the above-named plaintiff, The Washington Water Power Company, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above-entitled action in the District Court of the United States for the District of Idaho, Northern Division, which judgment was dated May —, 1913.

NOW, THEREFORE, the condition of this obligation is such that if the above-named, The Washington Water Power Company, shall prosecute said appeal from said final decree to effect and shall pay unto Kootenai County the amount of said judgment [599] namely, the sum of \$12,685, together with interest thereon, or such portion or part thereof as may be found due upon the final disposition of said

cause, interested to be calculated at the rate of 7% per annum to the 27th day of May, 1913, and thereafter at the date of 10% per annum, then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

THE WASHINGTON WATER POWER
COMPANY.

By JOHN P. GRAY,

Its Attorney.

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

[Corporate Seal]

By ROBT. H. ELDER,

Its Attorney in Fact.

O. W. CHAMBERLIN,

Agent. [600]

State of Idaho,

County of Kootenai,—ss.

Robert H. Elder, being first duly sworn, on his oath deposes and says:

That he is Attorney in Fact of Fidelity and Deposit Company of Maryland, the foregoing surety, and is authorized to execute said instrument for and on behalf of said company; that the said company is authorized to execute fiduciary and surety bonds within the State of Idaho and to act as surety therefor by virtue of a full compliance with all of the laws of the State of Idaho relating to surety companies doing business therein.

ROBERT H. ELDER.

Subscribed and sworn to before me this 3d day of May, 1913.

[Seal] ALBERT V. CHAMBERLIN.

Approved June 5/13.

DIETRICH,
Judge.

[Endorsed]: Filed June 5, 1913. A. L. Richardson, Clerk. [601]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

**Order [Directing Transmission of Original Exhibits,
etc., to Appellate Court].**

Upon motion of counsel for complainant, it is hereby

ORDERED that the Clerk of the above-entitled court be authorized to transmit the original exhibits, maps and photographs used upon the trial of this cause to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California,

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the same to be used on argument of said cause upon
appeal.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed May 28, 1913. A. L. Richardson,
Clerk. [602]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

**Stipulation [for Order Extending Time to Docket
Case, etc., in Appellate Court to July 24, 1913].**

IT IS HEREBY STIPULATED that if neces-
sary for the clerk, an order may be made extending
the time to docket this cause and file the transcript
in the United States Circuit Court of Appeals to and
including the 24th day of July, 1913.

JOHN P. GRAY,
Attorney for Plaintiff.

N. D. WERNETTE,
Attorney for Defendants.

[Endorsed]: Filed June 14, 1913. A. L. Richardson, Clerk. [603]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

**Stipulation Extending Time [to August 26, 1913, to
Docket Cause in Appellate Court].**

IT IS HEREBY STIPULATED AND
AGREED by and between the parties to the above-
entitled action that the time of the complainant and
appellant, The Washington Water Power Company,
to file its record on appeal in the above-entitled
action in the United States Circuit Court of Appeals
for the Ninth Circuit, shall be and hereby is extended
to and including the 26th day of August, 1913, and
the Judge of the above-entitled court is asked upon
this stipulation to make an order so extending the
same.

Dated this 15th day of July, 1913.

JOHN P. GRAY.

Attorney for Complainant.

N. D. WERNETTE,

Attorney for Defendants.

[Endorsed]: Filed July 19, 1913. A. L. Richardson, Clerk. [604]

*In the United States Circuit Court of Appeals,
Ninth Circuit.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,
Complainant and Appellant,
vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,
Defendants and Respondents.

Praeipie for Transcript.

To A. L. Richardson, Clerk of the Above-entitled
Court:

You will please prepare transcript of the complete record in the above-entitled cause to be filed in the office of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal perfected to said court, and include in said transcript the following pleadings, proceedings, papers, records and files, to wit:

Complaint, demurrer to complaint, order overruling demurrer to complaint, answer, replication, exhibits introduced upon the trial of said action and received in evidence, opinion of the court, decree and judgment, petition for appeal and for order continuing injunction, assignment of error, order allow-

ing appeal, order continuing injunction, undertaking and bond on appeal, stipulation that appeal may be docketed and heard at any place in Ninth Circuit where United States Circuit Court of Appeals convenes, to be designated by defendants, and order thereon, citation, supersedeas bond, order for transmissal of Exhibits, stipulation extending time to file transcript, stipulation for settlement of statement of evidence, order settling [605] statement of evidence, and any and all other record entries, pleadings, proceedings, papers and files necessary and proper to make a complete record upon said appeal in said cause.

Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

JOHN P. GRAY,

Attorney for The Washington Water Power Company, Appellant, Residence and P. O. Address, Coeur d'Alene, Idaho.

[Endorsed]: Filed July 25, 1913. A. L. Richardson, Clerk. [606]

*In the District Court of the United States for the
District of Idaho, Northern Division.*

No. 535.

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WANNACOTT, as Assessor
and Ex-officio Tax Collector of Kootenai
County, Idaho,

Defendants.

Citation [on Appeal].

United States of America,—ss.

To Kootenai County, a Municipal Corporation, and
Fred E. Wannacott, as Assessor and *Ex-officio*
Tax Collector of Kootenai County, Idaho, and
to His Successor and Successors:

You and each of you are hereby cited and admon-
ished to be and appear at a term of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit to be holden in the city of San Francisco, State
of California, on the 26th day of June, 1913, at 10
o'clock of said day, pursuant to an appeal filed in the
Clerk's office of the District Court of the United
States for the District of Idaho, Northern Division,
wherein The Washington Water Power Company is
complainant and appellant and you are defendants
and respondents, to show cause, if any there be, why
said decree entered in the above-entitled court and

cause on the 10th day of May, 1913, being the decree upon the merits in said cause, should not be reversed and set aside and speedy justice done to the parties [607] in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this 29th day of May, 1913.

FRANK S. DIETRICH,
Judge.

[Seal] Attest: A. L. RICHARDSON,
Clerk.

Service of the foregoing notice and citation admitted this 29th day of May, 1913.

N. D. WERNETTE,
ROBT. H. ELDER,

Solicitors for Defendants. [608]

[Endorsed]: No. 535. In the District Court of the United States, for the District of Idaho, Northern Division. The Wash. Water Power Co., Complainant, vs. Kootenai County et al., Defendants. Citation. Filed May 29, 1913. A. L. Richardson, Clerk. [609]

Return to Record.

And thereupon it is ordered by the Court that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,
Clerk. [610]

**[Certificate of Clerk U. S. District Court to
Transcript on Appeal.]**

*In the District Court of the United States for the
District of Idaho, Northern Division.*

WASHINGTON WATER POWER COMPANY, a
Corporation,

Appellant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and FRED E. WONNOCOTT, as Assessor
County, Idaho,

Appellee.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript of pages, numbered from 1 to 611, inclusive, to be full, true and correct copies of the pleadings and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in accordance with Praeceptum for Transcript, on file in said cause.

I further certify that the cost of the record herein amounts to the sum of \$366.20, and that the same has been paid by the appellant.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this 31st day of July, 1913.

[Seal]

A. L. RICHARDSON,

Clerk. [611]

[Endorsed]: No. 2302. United States Circuit Court of Appeals for the Ninth Circuit. The Washington Water Power Company, a Corporation, Appellant, vs. Kootenai County, a Municipal Corporation, and Fred E. Wannacott, as Assessor and *Ex-Officio* Tax Collector of Kootenai County, Idaho, and His Successor and Successors, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Northern Division.

Filed August 11, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Plaintiff,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and *Ex-Officio* Tax Collector of Kootenai
County, Idaho,

Defendants.

Order [Enlarging Time to July 24, 1913, to Docket
Case and File Record in Appellate Court].

It appearing to the Court that the statement on

appeal has not yet been settled and filed in the above-entitled cause and in accordance with Stipulation on file, it is hereby ordered that the time to docket this cause and file the same in the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby enlarged and extended to and including the 24th day of July, 1913.

Dated this 23d day of June, 1913.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 535. U. S. District Court, District of Idaho, Northern Division. The Washington Water Power Company, a Corporation, Plaintiff, vs. Kootenai County, a Municipal Corporation, and Fred E. Wonnacott, as Assessor and *Ex-Officio* Tax Collector of Kootenai County, Idaho, Defendants. Order Extending Time. Filed Jun. 26, 1913. F. D. Monckton, Clerk.

*In the District Court of the United States for the
District of Idaho, Northern Division.*

THE WASHINGTON WATER POWER COM-
PANY, a Corporation,

Complainant,

vs.

KOOTENAI COUNTY, a Municipal Corporation,
and FRED E. WONNACOTT, as Assessor
and *Ex-Officio* Tax Collector of Kootenai
County, Idaho,

Defendants.

Order [Enlarging Time to August 26, 1913, to Docket Case and File Record in Appellate Court].

On stipulation of the parties to the above-entitled action and good cause appearing therefor, it is

ORDERED that the complainant and appellant shall have and is hereby given to and including the 26th day of August, 1913, to lodge and file its record on appeal in the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled action.

Dated July 19th, 1913.

FRANK S. DIETRICH,
Judge.

[Endorsed]: No. 535. In the District Court of the United States for the District of Idaho, Northern Division. The Wash. Water Power Co., Plaintiff, vs. Kootenai County et al., Defendants. Order.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Aug. 26, 1913, to File Record thereof and to Docket Case. Filed Jul. 21, 1913. F. D. Monckton, Clerk.

No. 2302. United States Circuit Court of Appeals for the Ninth Circuit. Two Orders Under Rule 16 Enlarging Time to ——— to File Record thereof and to Docket Case. Re-filed Aug. 11, 1913. F. D. Monckton, Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit

THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

APPELLANT,

v.

KOOTENAI COUNTY, A MUNICIPAL CORPORATION, AND
FRED E. WONNACOTT, AS ASSESSOR AND EX-OFFICIO
TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO,
AND HIS SUCCESSOR AND SUCCESSORS,

APPELLES,

BRIEF OF APPELLANT

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF IDAHO, NORTHERN DIVISION.

JOHN P. GRAY,
COEUR D'ALENE, IDAHO.
F. T. POST,
SPOKANE, WASHINGTON,
ATTORNEYS FOR APPELLANT.

United States
Circuit Court of Appeals
For the Ninth Circuit

THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

APPELLANT,

v.

KOOTENAI COUNTY, A MUNICIPAL CORPORATION, AND
FRED E. WONNACOTT, AS ASSESSOR AND EX-OFFICIO
TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO,
AND HIS SUCCESSOR AND SUCCESSORS,

APPELLES,

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF IDAHO, NORTHERN DIVISION.

STATEMENT OF FACTS.

The Washington Water Power Company, a Washington corporation, is the owner of a hydro-electric power plant situated at Post Falls on the Spokane river in Kootenai County, Idaho. At Post Falls is a natural water fall, which has been improved. The Spokane river heads about nine miles above Post Falls, and is the outlet of Lake Coeur d'Alene. Flowing into Lake Coeur d'Alene are two large rivers and in the power development a considerable

amount of low land adjacent to the lake and to the two rivers flowing into the lake was overflowed and acquired by the company. This property is all situated in Kootenai County.

The distribution system of the company extends through the two counties of Kootenai and Shoshone and practically all of the power developed at the plant is disposed of in the Coeur d'Alene mining district in Shoshone County, Idaho, for mining purposes.

At the time the taxes complained of in the bill were levied, the property in each county was assessed by the local county assessors. The property under the system then in vogue was not assessed as a whole, but by separate items. Complaint was made by the bill of the valuation for assessment purposes placed by the assessor of Kootenai County upon the property of the appellant situated at Post Falls, taxes upon the other items of property, to-wit, the overflow lands, the distribution system and the property in Shoshone County having been paid. The property so covered by the bill is situated in several school districts and road districts; a portion of the taxes complained of went to each of the school districts, to the various road districts, a portion to the county and a portion to the State of Idaho, and for those reasons and for the purpose of preventing a multiplicity of suits as well as others which will be hereafter referred to, appellant brought itself within the jurisdiction of a Federal equity court.

The appellant complained of the assessment as both unequal and excessive; that not only was the assessment unjust and unequal in that the property of the appellant was assessed proportionately higher than other property, but the appellant also charged that its property, concerning which complaint was made, was assessed at a sum vastly in excess of its full cash value. The assessments established by the county officers complained of were as follows:

On page 11, Book 1 of Deeds, situate in Sec. 3 and 4, Twp. 50, Range 5, and on pages 412 and 413, Book "U" of Deeds, in Sec. 4, Twp. 50, R. 5 -----\$1,080,000.00

On pages 460, 461, 462, 464 and 465, Book 9 of Deeds, in Sec. 3, Twp. 50, Range 5----- 75,000.00

On pages 97, Book 34 of Deeds, Grist Mill in Sec. 3, Twp. 50, Range 5 40,000.00

Bear Trap dam and small dam at Post Falls ----- 562,500.00

Building and excavations, Sec. 4, Twp. 50, R. 5, ----- 223,000.00

Machinery on Island No. 2, Sec. 4, Twp. 50, R. 5----- 350,000.00

Concrete foundation and dam, Sec. 4, Twp. 50, Range 5 ----- 150,000.00

Railway spur and bridge ----- 48,750.00

\$2,529,250.00

The valuations upon the real estate were reduced 15 per cent by the State Board of Equalization, together with all other real estate in the County of Kootenai, the power of the State Board under the Idaho laws being to increase or diminish all property of a certain classification within a county solely for the purpose of equalizing between counties.

The appellant presented to the court evidence showing the value of the property, based upon three methods of arriving at that value. First, its actual cost, second, the cost of reproduction and third the value based upon its earnings.

(1) THE COST

The property, the value of which was complained of in this case, cost the appellant \$1,068,773.01, and without the land, the dams, machinery and buildings cost \$959,500.57. This cost was shown by the testimony of the witness Uhden, who had checked over the cost from the original records kept by him at the time of its construction. (Record, page 326-7). in the course of the testimony there was shown to be some slight additions thereafter. The testimony was not controverted, and the court below in its opinion recognized the force of the uncontradicted testimony upon that feature and in the opinion used the following language:

"It is sufficient to say that upon credible testimony it appears that the actual cost of the artificial plant, all of which has been constructed within the last six years, was between \$900,000.00 and \$1,000,000.00, and the cost of all the property embraced within the assessment under consideration, including site, water rights, and all other natural advantages, did not exceed \$1,200,000, and was probably more nearly \$1,100,000. It further satisfactorily appears that the artificial plant could be reproduced new for substantially what it cost." Record p. 627.

(2) THE COST OF REPRODUCTION

The testimony showed that the cost of reconstructing the plant exclusive of the site or water right of way would be \$954,170.79. This estimate was fixed by Mr. A. J. Wiley, a construction engineer of great experience and represented his independent investigation (Record, pages 316-317). This testimony was not controverted, and the court below accepted that testimony as correct.

(3) THE VALUE BASED UPON THE EARNINGS OF THE PLANT

In this connection, it is but fair to state that the testimony showed that the power development of the appellant at Post Falls, and the dams there installed, not only tended to develop the natural water fall, but did increase to a considerable extent the usefulness of Lake Coeur d'Alene as a storage reservoir, and did conserve a quantity of water, concerning the exact amount of which there was a con-

flict in the testimony, for use in low water season.

It further appeared by the testimony that situated in the State of Washington the appellant owned other power plants upon the same river, some of which were to some degree benefitted by the increased flow of the Spokane river during the low water season resulting from the storage of water in Lake Coeur d'Alene.

With reference to the earnings of the plant and its value based thereon, there was little, if any, conflict, the controversy being entirely as to the deductions to be drawn from the facts which were not contrverted. The plant at Post Falls is many miles nearer the mines in Shoshone county than any other plant of appellant. There is, however, an interlocking of the plants for the purpose of security of service and additional assurance of continuous service to all customers, both in Washington and Idaho. However, the energy distributed to the Coeur d'Alene mines is distributed from the Post Falls plant for economic reasons principally, it being nearer, and such surplus as is not used in Idaho was transmitted to the state of Washington and there distributed and sold in the city of Spokane by the appellant. The method of crediting to revenue the surplus of power so transmitted to Washington is hereafter referred to.

By reason of the factors referred to, the court below was of the view that there was apparently no

means by which the value of the site of the appellant could be intelligently estimated except by including it in the plant as a whole and capitalizing the value thereof. In arriving at the value of the property of the appellant based upon the capitalization of its net earnings, the testimony was not conflicting, and the court adopted in his opinion and for the purpose of reaching a conclusion, the calculations of Professor Corey, which were substantially the same as those of the witness Wiley, both called as experts on behalf of the appellant. The calculations of Mr. Wiley were contained in Exhibit 18, pages 217-225.

The value of the property, the assessment upon which is in controversy in this action, according to Professor Corey was \$988,573.85 at the time the assessment complained of was levied. The calculations were based upon the gross revenues of the plant for the three years preceding averaged up, and upon the basis of permitting an earning of 10 per cent per annum, the appellant contending that because of the hazardous business in which it was engaged, namely, the dependence practically in whole upon mining for its revenue, that it was entitled to earn such a return. The court below allowed less for depreciation and maintenance than the witness Corey and the witness Wiley testified in their judgment was proper; allowed less for management, and capitalized the net earnings at the rate of 8 per cent.

There was then deducted by the court in the same manner as Professor Corey had made deductions, the depreciated value of the Shoshone County property, the overflow lands, the pole lines and substations at Cataldo upon which the taxes had been paid, leaving only then the hydro-electric plant and power site at Post Falls, and as found by the court, the value of the property covered by the assessment under consideration arrived at in that manner amounted to the sum of \$1,718,636.37. (Opinion of the Court, pages 631-633). Except in one respect did the court disregard the figures shown in Exhibit 18, other than to change the amount which he believed proper for depreciation, maintenance, management, etc., and that was in connection with the making of additional credit to revenue on account of power delivered to two men by the name of Martin and Strathern, who for a part of the original power site instead of taking money received a grant from the appellant of a perpetual right to a certain quantity of power.

The assessed valuation placed by the assessor of the county upon all such property, amounted to the sum of \$2,529,250, approximately \$1,400,000 more than the original cost and exclusive of the right of way, approximately \$1,500,000 more than the cost of reproduction, and a little over \$810,000 more than the court found the value of the property to be based upon the capitalization of its earnings on the basis

of a return of 8 per cent, and with the small depreciation, maintenance and management charges allowed.

The court below upon the testimony and upon the findings which have been briefly above referred to, took the view which is succinctly stated in the opinion, Record pages 642 and 643, and which presents in large measure the questions in which we believe the court erred. We may be therefore permitted to quote from the opinion as follows:

“Keeping in view these conditions of the case, and bearing in mind that light decrease in an allowance for depreciation or maintenance or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910, greatly exceeds that sold in 1908 and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deductions on account of increased expense, it is apparent that upon the record before us reasonable men might reach different conclusions, and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence; and it must be remembered that the assessor and board of equalization were not possessed

of much of the information of which we have the benefit. It is therefore thought that if we had nothing but the total or aggregate valuation made by the assessor, it would not be a case in which a court could afford relief against an excessive assessment; of course, if the county officers had had the light which is now shed upon the subject by the evidence before us, a different view might be taken."

However, the court did reduce the valuation upon the Bear trap dam and small dam by the sum of \$386,229, and upon the railroad spur and bridge \$28, 954.61, a total reduction of \$415,183.61, and with those reductions and one further reduction of 15 per cent upon the real estate allowed by the State Board of Equalization, judgment was entered against the appellant and directing that the taxes be paid upon that valuation, together with penalties thereon. From the judgment, this appeal has been perfected.

ASSIGNMENT OF ERRORS.

The appellant specifies the following particulars in which it believes and avers the court erred in rendering the decree herein:

I.

The court erred in holding that the proof of the complainant does not make out a case of clear and hostile discrimination against the complainant, against the collection of any portion of the taxes complained of.

II.

For the reason that the court found as a fact based upon the earnings of the plant as allowed by the court, upon the depreciation as allowed by the court and other items as found by the court, that the value of the plant did not exceed the sum of \$1,718,636.37, and that that sum represented the value of the property covered by the assessment under consideration, and then declined to give the complainant the benefit of such finding, but permitted the assessment complained of to stand as the value of the said property, and allowed no deductions from the assessment made by the said assessor, except a reduction from the assessed valuations on the dams of \$386,229, and of \$28,954.61 from the assessed valuation of a railroad spur and bridge.

III.

For the reason that even under the facts as found by the court, the valuation of the property under consideration could not and should not have been fixed or permitted to stand in any sum in excess of the sum of \$1,718,636.37.

IV.

The court erred in permitting the valuation of \$19,795.39, the original cost of a railroad spur and bridge, to remain as the assessed valuation, thereof, whereas, the testimony showed that the structure was simply put in for construction purposes and was not of a value in excess of \$4,500.

V.

For the reason that the court erred in not reducing the valuation upon the railroad spur and bridge of the complainant from the sum of \$48,750 to the sum of \$4,500.

VI.

The court erred in refusing to enjoin and restrain the collection of taxes complained of upon the property of the complainant.

VII.

The court erred in including in its decree any penalties against complainant for failure to pay the taxes assessed against the property referred to in the bill.

VIII.

The court erred in taking into consideration the fact that the complainant owned other power sites in the State of Washington in arriving at the value of the real estate and power site of the complainant and in taking into consideration anything other than the value of the plant of the complainant, and in fixing its cash value at the amount which that plant would be taken at in payment of a just debt due from a solvent debtor.

IX.

The court erred in taking into consideration the possible benefit to certain property owned by the complainant in the State of Washington, arising from the ownership by complainant of the controll-

ing works at Post Falls, in fixing the valuation of the property of complainant.

ARGUMENT.

The court had jurisdiction in this case to grant the relief prayed for if the complainant was entitled to the same.

Section 2, Article VII of the Constitution of Idaho provides:

“The legislature shall provide such revenue as may be needful by levying a tax by valuation so that each person or corporation shall pay a tax in proportion to the value of his, her or its property, except as in this article herein otherwise provided.

Section 5 of Article VII provides as follows:

All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.

The statutes in force at the time the tax complained of in this action provided, Section 1652, Revised Codes:

All taxable property must be assessed at its full cash value; lands and improvements thereon must be assessed separately.

Section 1646 of the Revised Codes defines the term “value” and “full cash value” as follows:

The term “value” and “full cash value” means the amount at which the property would be taken

in payment of a just debt due from a solvent debtor.

In this case the appellant alleges that its property has been assessed at more than twice its full cash value, and that no other property in the County of Kootenai was assessed in excess of its full cash value. The respondents claim that all property in the county is assessed at its full cash value, and that the assessment of the property of the appellant complained of represents only the full cash value of appellant's property. What the appellant is complaining of is that its property is assessed in excess of its full cash value, in violation of the constitutional provisions and the statutes of the state. Let it be borne in mind, that this is not simply the case of one taxpayer claiming that all property in the county is assessed at less than its full value and that his property is assessed at a percentage greater than that of the other property in the county.

JURISDICTION OF THE FEDERAL EQUITY COURT.

The requisite diversity of citizenship is shown. The court has jurisdiction over the cause because it is a suit between citizens of different states, and the only question is whether or not ground exists for invoking the action of a court of equity. It is, of course,, well settled that a suit to enjoin the collection of a tax will not be sustained in a court of equity, at least in the Federal equity courts, in which the sole ground set forth in the bill is that the tax is illegal or excessive. There must be some other cir-

cumstance or fact which will bring the case under some recognized head of equity jurisdiction.

The record in this case shows that a portion of the taxes are for state purposes, a portion for county taxes of Kootenai County, a portion go to various school districts, and a portion to various road districts. Nothing but a suit in equity could be of any avail to the appellant. No action can be maintained against the state, no recovery had against the state, and money once paid into the state treasury can only be taken out by an act of the legislature. It would require a multiplicity of suits to recover back the excessive sums required to be paid to the various school districts, road districts and the county. Upon that ground then, the equity court had jurisdiction.

It is further alleged and admitted that the excessive tax if not paid would be a cloud on the title of the appellant; that its property would be sold and certificates of sale issued, and would be a cloud upon the title. In other words, this is not an action in which the jurisdiction of the Federal equity court is asked solely and simply because of an excessive levy, but upon well established and well recognized rules of equity jurisdiction.

Atchinson T & S. F. R. Co. v. Sullivan, 173 Fed. 456-469.

Dows v. City of Chicago, 11 Wall. 108.

Taylor et al. v. Louisville & N. R. Co. 88 Fed. 350.

State Railroad Tax Cases, 92 U. S. 575.

In this case, under the evidence and the record, it must be evident that the assessor of Kootenai County in assessing the property of the appellee did not exercise intelligent discrimination or fair measure of honesty to the appellant and that the County Board of Equalization did no more. The officers of the county were guilty either of intentional wrong or of gross mistake. The evidence in the record as to the assessment of property is that no property was assessed at its full cash value other than the property of the appellant, which was assessed in excess thereof upon any basis of computation which might be adopted. Among other testimony introduced was appellant's Exhibits 15 and 16, pages 133 to 142 inclusive. Included therein are shown all conveyances of land in Kootenai County during the year 1911, where other than a nominal consideration was named in the conveyance and the valuation thereof for assessment purposes after equalization. In Appellant's Exhibit 16 are shown all mortgages placed of record during the year 1911, the consideration of the mortgage and the value placed upon the property for assessment purposes. These show more accurately than could any testimony of witnesses as to the particular piece, that there was a systematic undervaluation throughout that county, that other property was not assessed at its full value or anything like it, and scarcely a piece of land mortgaged during that time was valued for assessment purposes at the amount of the mort-

gage placed upon it and often times far below the mortgage.

Upon this appeal, however, the position of the appellant is that under the Constitution and laws of the State of Idaho, the assessment in this particular case constitutes such a fraud in law that the court had jurisdiction to grant relief and that it was its duty to investigate the value of the property, the valuation placed thereon by the assessor and to give to the appellant the benefit of the conclusions which the court reached as to the value of the property, and upon that ground this appeal is presented.

At the time the case was commenced and at the time of the trial there was in Idaho no Public Service Commission. Since that time, one has been created and the questions of the amount which should be allowed upon such property for depreciation, maintenance, operation and reasonable rate of return are all matters that will sooner or later be of necessity enquired into and settled, by that commission. Because of that fact, although the appellant believes the allowance for depreciation, maintenance and management allowed were too low and that they should have been fixed as testified to by Professor Corey and Mr. Wiley, the appellant does not ask this court to review the action of the court below upon those matters, but so far as this particular appeal is concerned is content to let them stand. What we do most earnestly urge is that the appellant was entitled to

the benefit of the findings of the court below upon the value of the appellant's property.

The court below, in arriving at the valuation of this property based on its earnings, allowed a minimum sum to be charged against the gross earnings for maintenance, for depreciation, for management, but even when capitalized upon an allowed earning of 8 per cent the property could be given a value no greater than \$1,718,636.37, and yet that very property had been assessed by the assessor of Kootenai County and the assessment upheld by the Board of Equalization in the sum of \$2,529,250. The assessor had made no honest attempt to investigate or cause to be investigated the books or property of the company. The Board of Equalization had been offered access thereto and had taken no advantage thereof, but simply upon the assessor's statement, without evidence or investigation on his part, sustained his assessment at a sum over \$800,000 in excess of what the court found to be its highest value, based upon its earnings, and \$1,400,000 in excess of what it cost.

Where the facts are such as these, it must be that a court of equity has the power and imposed upon it is the duty to grant relief to the property owner. The court below, notwithstanding the very great difference between what the property was shown to be worth, and its assessed value, was of the opinion that if it had been assessed as one item, the fact that it was assessed so beyond its actual

value, as shown by its cost or by its earning capacity, would not be a case in which the court could afford relief against an excessive assessment. In other words, the view of the court below is thus expressed:

“Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenance or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910 greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deductions on account of increased expense, it is apparent that upon the record before us reasonable men might reach different conclusions, and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence; and it must be remembered that the assessor and board of equalization were not possessed of much of the information of which we have the benefit. It is therefore thought that if we had nothing but the total or aggregate valuation made by the assessor, it would not be a case in which a court could afford relief against an excessive assessment; of course, if the county officers had had the light which is now shed upon the subject by the evidence

before us, a different view might be taken." P. 642-3.

The particular complaint which this appellant makes is that the court below in its view of the law erred and that if the court had the power at all to examine and investigate into the value of the property, it was its duty where there was shown to be so great a difference between the aggregate valuation made by the assessor and that shown by the testimony, to give relief. Otherwise the very provisions of the Constitution of Idaho and the provisions of its laws with reference to the just and fair and equal assessment of all property are without force. If, as a matter of law, a court of equity cannot interfere with the discretion of the taxing officer however it may be abused, upon that ground it might be that the appellant would be entitled to no relief, but if that power exists, where such a gross over valuation beyond the full value of the property is shown as was in this case, it then must certainly become the duty of the court to give the benefit of its findings to the tax payer.

The court below appreciated that the appellant had been over assessed. The opinion of the learned judge below so shows, and because of that view the court below did give to the appellant the benefit of a reduction of \$386,000 upon the value placed upon the dams, and \$29,000 upon a railway spur and bridge. If the court found those dams to be so excessively assessed, it was the same plain duty of the court below to give to the appellant the benefit of his

findings in so far as the other property was concerned, and the mere fact that honest error may at times be made in assessment by an assessing officer, does not deprive the court of equity of the power when it once has assumed jurisdiction to grant relief to which a property owner is entitled, under the facts shown in the record. The court found, it must have found, that as to the dams not only were they excessively assessed, not only were they unjustly assessed, but that it was not a mere error of judgment, and that no intelligent effort was made to ascertain their value. It would be just as easy for the assessor to understand and find the value of the machinery, to ascertain the value of the entire plant, as it would be for him or his engineers to determine the value of those dams.

To increase the valuation for assessment purposes of property such as the property of the Appellant \$200,000 or \$300,000 or \$400,000 must of necessity involve the practical taking of that property, and if there is no relief in equity, not only are the provisions of the Idaho Constitution disregarded, but the property of the taxpayer is taken from him without redress, without right and certainly in violation of the principles both of justice and equal taxation and of equity. We assert, therefore, that accepting the finding of the court below as to the value for the purposes of this case, accepting the meager depreciation and maintenance allowed and the very small sum allowed for management, we have been

deprived of the benefit of the court's finding, and that if it had the power to enquire, it had the power to give to the appellant the benefit of its conclusion.

It was earnestly urged on behalf of the respondents, to which the court below seemed to give some heed, that a large valuation might be justified against the property of the appellant because of the peculiar location thereof, and because it permitted the appellant to store the waters in Lake Coeur d'Alene which increased the low water flow of the Spokane river, and thereby afforded not alone advantage to the power plant at Post Falls, but incidentally advantage to other power plants owned by the appellant in the State of Washington. The court, we believe in this respect erred, and for these reasons:

Section 1646 of the Revised Codes of Idaho defines the term "value" and "full cash value" as follows:

The term "value" and "full cash value" means the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

And it is at the full cash value that property must be assessed. We, therefore, assert that the mere fact that the appellant owns power sites in Washington which are incidentally benefited by this power development, does not add to the value of the power site or plant at Post Falls for assessment purposes because that property for assessment purposes must be valued at that

amount at which it would be taken in payment of a just debt due from a solvent debtor, and without regard to other plants which it may have in another state. The power plants owned by the appellant in the State of Washington are benefited proportionately no more than are the power plants of other individuals and corporations situated upon the same river. Whatever advantage the one gets the other gets from having an increased low water flow in the river. It is purely incidental to the conservation of the water in the lake for the Post Falls plant.

The evidence of Mr. C. S. McCalla (Record pages 597 to 612, 614 to 618) explains the effect of the control of the water at Post Falls upon the other water power plants of the company in the State of Washington. As Mr. McCalla explains, the water used at Post Falls does not relatively or anything like relatively benefit other power plants in the State of Washington, for the reason that the water reaches those plants at the wrong time of day, and used as it is at Post Falls it reaches the points of use in Washington at times when the water is not needed on account of the character of the service; and his testimony is that with the lack of storage at the plants in Washington the additional water is of little additional advantage, although of some. More than that it is a matter of public knowledge that the value of the plants of the company in the State of Washington are based for assessment purposes upon

what they will produce in the way of electric energy; and in arriving at that value any added electrical energy there generated by reason of the additional flow in the river is taken into consideration the same as the values of properties owned by others than the appellant. We assert that this plant in Idaho, which is used so far as the Idaho demand is concerned, should be valued and assessed the same as if it were owned by some person other than the Washington company. That is the valuation for assessment purposes prescribed by the statutes of Idaho. The property, as a matter of fact, is given an additional value which is taken into consideration by the court below, by reason of appellant's ownership thereof, and that is, that all electrical energy which can be there generated can be sold to advantage, for such as is not used in the State of Idaho is taken to the State of Washington and there distributed and sold by the Washington Water Power Company, and in determining the value of the property based upon its earnings, the Washington Water Power Company charges itself with that electricity at the same price that it is selling to others at the switch board. We, therefore, earnestly urge that the value at which that property can be assessed is the value of the property separate and apart from any other property of the Washington Water Power Company, what it would bring; in other words, what it would be worth to an Idaho corporation which took it in payment of a just debt due from a solvent debtor.

It is true the flow of the river is somewhat increased by the storage in Lake Coeur d'Alene, but the advantage, as explained by Mr. MacCalla, to the other plants is more theoretical than real. As Mr. MacCalla testified, the water is used at Post Falls at the peak load which occurs at five or six o'clock in the afternoon. That increased flow reaches Spokane at two or three o'clock in the morning, at the time when the demand is least; it reaches the Little Falls planton the following forenoon when the demand is also small. Without storage at these plants below, the increased flow and benefit is in the greatest measure lost, and at those plants is largely wasted because it cannot be held for use without local storage. According to the testimony of Mr. MacCalla (Record, pages 610-611), the water has been used at Post Falls to as great advantage as it could be. The value of the Post Falls plant depends upon the use of that water there without consideration to the other plants on the river, and the earnings of the plant are based upon the fullest use of the water which careful operation could make.

Suggestion was made in the course of the trial that the value of the property might in some way be enhanced by the ability to so control the water as to injure or benefit plants situated on the river in the State of Washington. Such a use, however, would be at the expense of the development at Post Falls, and the greatest use of the water there. So long as the water is used as it has been at Post Falls

for developing electric energy in the most efficient manner and to the full capacity, then such matter has no consideration here. Moreover, the owner of that plant is a public service corporation in Idaho and has acquired much of its property under the right of eminent domain. It is subject to the control and regulation of the state; the electricity which it produces is subject to use at reasonable rates by the people of the state. To use it for any such purpose as to benefit or injure other water powers and without consideration to its use at Post Falls would be a violation of its public duty, a violation of the law of eminent domain both in letter and in spirit, and would undoubtedly subject the person or corporation owning the property to the pains and penalties of the law, even to the loss of the over flow rights acquired under the eminent domain statutes of the state. The mere fact that it has a property there, which by the use of the controlling works could let the water down for greater beneficial use at Spokane or elsewhere, cannot affect its value when consideration is given to the fact that it has an electrical power generation station at Post Falls, that the water has been used, is used and is proposed to be used, and under the law must be used for the development to its reasonable capacity of the power at Post Falls to supply the demands of the people of the State of Idaho.

There is no suggestion in the record that the appellant has not efficiently operated its plant and

efficiently used the water. For these reasons, we suggest that both the court below and the officers of the county had no right to take into consideration anything other than the full cash value of the plant, and in fixing that to consider only the amount that that plant would be taken at in payment of a just debt due from a solvent debtor.

The appellant also believes that because of the hazardous character of the business upon which depends the return upon its investment, namely, the use of power in the Coeur d'Alene Mining District (Testimony of Mr. Huntington, Record pages 395-6; testimony of Frederick Burbidge, page 370), that the reasonable rates of return shall be 10 per cent. However, the court below believed that 8 per cent was proper. In view of the fact that there is now a Public Service Commission in the State of Idaho, the appellant does not here urge error on account of the ruling of the court in not finding that the appellant should be entitled to 10 per cent.

PENALTY.

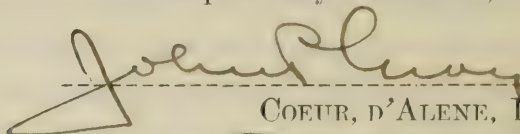
The court included in its decree penalties against the appellant of 10 per cent upon the valuation fixed by the assessor after deducting therefrom the sums by which the same was reduced. In other words, the court held that the appellant was entitled to relief as to the dams and as to the railroad spur and bridge. The assessments were grossly excessive, and under the findings of the court, the court did not find that the property was worth as much as it

was assessed for, yet the appellant was charged with penalties against all property upon which the taxes were not paid, and which were included within the bill of complaint, and this, we assert, was unjust. That the complainant had good cause to complain is shown by the fact that in part, at least, the court has sustained its contention; moreover it has found that its property was assessed at more than it was worth based upon its earnings, its cost or the cost of reproduction.

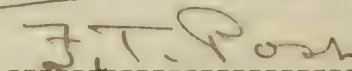
CONCLUSION.

In conclusion, we earnestly assert that the court below had jurisdiction to grant to the appellant relief; that after an investigation, the court found that the property was not worth more than the sum of \$1,718,636.37, and that after taking a view most unfavorable to the appellant, upon the depreciation, maintenance and management allowances. Having so found, we insist that the appellant was entitled to the benefit of that finding and to have the valuation of that property reduced to that sum at least.

Respectfully submitted,



COEUR, D'ALENE, IDAHO.



SPOKANE, WASHINGTON,
ATTORNEYS FOR APPELLANT.

United States
Circuit Court of Appeals
For the Ninth Circuit

THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

APPELLANT,

V.

KOOTENAI COUNTY, A MUNICIPAL CORPORATION, AND
FRED E. WONNACOTT, AS ASSESSOR AND EX-OFFICIO
TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO,
AND HIS SUCCESSOR AND SUCCESSORS.

APPELLES,

BRIEF OF APPELLES

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF IDAHO, NORTHERN DIVISION.

ROBERT H. ELDER,

N. D. WERNETTE,

Coeur d'Alene, Idaho,

Attorneys for Appelles.

United States
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THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

APPELLANT,

V.

KOOTENAI COUNTY, A MUNICIPAL CORPORATION, AND
 FRED E. WONNACOTT, AS ASSESSOR AND EX-OFFICIO
 TAX COLLECTOR OF KOOTENAI COUNTY, IDAHO,
 AND HIS SUCCESSOR AND SUCCESSORS.

APPELLES,

BRIEF OF APPELLES

UPON APPEAL FROM THE UNITED STATES
 DISTRICT COURT FOR THE DISTRICT
 OF IDAHO, NORTHERN DIVISION.

By this appeal, the Washington Water Power Company is seeking to have reviewed the judgment of the District Court in and for the District of Idaho, wherein the Company sought an injunction against the collection of its taxes in Kootenai County; And where there is no showing of fraud on the part of the Assessor or Board of Equalization; and the only claim made is that the tax is excessive, and

there being a great conflict in the evidence submitted as to the full cash value of the property of the Company.

ARGUMENT AND AUTHORITIES.

The appellant urges only a few of its many assignments of error. We will notice the assignments made by the appellant in their order:

JURISDICTION:

We earnestly urge that a court of equity is without jurisdiction to grant relief, by injunction against the collection of a State and County Tax, where the only claim urged is that the tax is excessive; and where it is conceded there was no fraud committed by the taxing officers.

It is true that the appellant alleged fraud on the part of the taxing officers, but they did not attempt to substantiate this charge, and no evidence was introduced, tending to show, or showing any fraud on the part of the assessor or the Board of Equalization.

The record before the court establishes beyond any question, that the taxing officers of Kootenai county acted in accordance with their best judgment and assessed the property at what they believed to be its full and actual cash value. (Trans. pp. 496-518.)

There is no evidence in the record that tends to show a systematic intentional omission or undervaluation of other taxable property in Kootenai County.

The learned Judge in his opinion on page 623 clearly so finds and has this to say: "Turning now to the evidence, I am inclined to think that the allegation that property generally in this county was assessed at only from thirty to sixty per cent of its actual cash value, was not sustained."

If the appellant was really serious in its claim, that there was a systematic under-valuation of property in Kootenai county, and that the property was only assessed at from thirty to sixty per cent of its value, it would not be contented with having its property assessed at \$1,718,636.37 which the appellant claims is the full cash value of its property.

The levying of taxes is a legislative duty, and the Legislature of the State of Idaho has provided a complete tax system. Under that system, a party who deems himself aggrieved by reason of an assessment, has been provided with a remedy before the Board of Equalization, and when this board has passed upon the assessment, it becomes final.

Under the taxing law of Idaho as construed by the Supreme Court of the State of Idaho in the case of Humbird Lumber Company v. Thompson,¹¹ Idaho 614, an equity court has no jurisdiction to grant relief against the collection of taxes where there is no showing of fraud, and where the only claim is, that the tax is excessive. The court must assume that the officers selected by the people performed their duties as defined by the law of the State.

This being true, we respectfully submit that

the action on the part of the taxing officers of Kootenai county when they determined the assessment, was a final determination of the matter; and in order to attack the assessment in an equity court, it would be necessary for the plaintiff to show fraud on the part of the officials.

The statute of the State of Idaho under consideration is the source and measure of the power and jurisdiction, both of the assessor and the Board of Equalization, and of the Court.

In the examination of the evidence, we fail to find any evidence tending to support the charge of fraud in the bill; and the appellants in the lower court fail to show that the assessment was fraudulent or purposely oppressive, and there is no indication of any kind or character that the Assessor did not act in the utmost good faith in assessing the plaintiff's property.

The learned Judge in his opinion has this to say relative to fraud on the part of the assessing officers (rec. 641-643) "There remains the important question as to whether or not the conditions are such as to justify an injunction against the enforcement of taxes which are found to be excessive. There is very little in the record tending to support the charge that the assessing officers acted fraudulently or willfully in over-valuing the property, other than the mere fact of the over valuation itself. That in 1911 there prevailed some local feeling of unfriendliness, if not ill-will, toward plaintiff, may be fairly

inferred, and that one member of the board of equalization was, by reason of his personal controversies with plaintiff, somewhat prejudiced, is not improbable, but aside from these circumstances, there is nothing to impeach the good faith of the officers, unless the assessment, because of its essential unreasonableness, is of itself sufficient to discredit them. But it must be borne in mind that while I have reached the conclusion that \$1,718,636.37 is a fair estimate of the value of the property in 1911, many of the factors involved in the process by which this conclusion was reached are admittedly uncertain and are in a measure susceptible to an honest difference of opinion. The evidence is extremely meager upon certain features of the case, and with the facts disclosed by the record, supplemented by such other information as he may have acquired in the course of his investigations, Professor Cory, who was brought into the case as a specialist of much learning and experience, hesitated, if he did not wholly decline to express an unqualified opinion as to the actual value of the property and Mr. Wiley, whose standing as an hydraulic engineer is unquestioned, in testifying upon this phase of the case, answered only a hypothetical question. Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenance or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910,

greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deduction on account of increased expense it is apparent that upon the record before us reasonable men might reach different conclusions, and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence; and it must be remembered that the assessor and board of equalization were not possessed of much of the information of which we have the benefit. It is, therefore, thought that if we had nothing but the total or aggregate valuation made by the assessor, it would not be a case in which a court could afford relief against an excessive assessment; of course, if the county officers had had the light which is now shed upon the subject by the evidence before us, a different view might be taken."

Inequalities in the valuation made under a valid law of property for taxation does not constitute grounds for enjoining the tax in the absence of fraudulent discrimination by the agents and officers charged by the law with the duty of making such valuation.

In Woodman v. Ely, 2 Federal 839, this significant language is used: "The bill alleges a fraudulently excessive levy and inequality in the valuation on the roll. Mere excessive valuation does not justify an injunction or restraining the collection of a tax

and there is an entire failure to prove fraud on the part of the Assessor."

In *National Bank v. Kimball*, 103 U. S. 732, 26 L. Ed. 469, it is said in the opinion: "The allegations are pretty full that the assessments are partial, unequal and unjust and do not result in the uniformity of taxation which Illinois requires * * * We think the Circuit Court did not err in dismissing such a bill."

In the *Railroad Tax Cases*, 92 U. S. 575, 23 L. Ed. 663, an opinion of Mr. Justice Miller, we find this language in the first syllabus: "While this court does not lay down any absolute rule limiting the powers of a court of equity in restraining the collection of taxes, it declares that it is essential that every case be brought within some of the recognized rules of equitable jurisdiction, and that neither illegality or irregularity in the proceedings, nor error or excess in the valuation, nor the hardships or injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax, will authorize an injunction against its collection."

The second clause says: "This rule is founded on the principle that the levy of taxes is a legislative and not a judicial function, and the court can neither make or cause to be made, a new assessment, if the one complained of be erroneous, and also in the necessity of the taxes, without which the state could not exist, should be regularly and promptly paid into the treasury."

The foregoing cases were all approved and cited by the Supreme Court of the State of Idaho, in the case of the *Humbird Lumber Company v. Thompson*, 11 Idaho, 614;

In *Pittsburg etc. Ry. v. the Board of Public Works*, Mr. Justice Gray delivering the opinion says: "The collection of taxes assessed under the authority of the state is not to be restrained by Writ of Injunction from a court of the United States unless it clearly appears not only that the tax is illegal but that the owner of the property taxed has no adequate remedy by the ordinary processes of law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction."

In the case of *Sheldon v. Platt*, 141 Fed. Rep. 452, Justice Fuller says: "It was ruled in *Dows v. Chicago*, 11 Wall, 108, 20 L. Ed. 165, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant. And Mr. Justice Field speaking for the court said: "The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at

least in the Federal Courts, where there is a plain and adequate remedy at law." And, except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection, or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back his money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection, nor would he have been compelled to resort to a multiplicity of suits to determine his rights. His entire claim might have been embraced in a single action. We see no ground for the interposition of a court of equity which would not equally justify such interference in any case of threatened invasion of real or personal property."

On page 1382. *Cooley on Taxations*

"But for a merely excessive or unequal assessment, where no principle of law is violated in making it, and the complaint is an error of judgment only, the sole remedy is an application for abatement, either to the assessors or to such statutory board as has been provided for hearing it. The courts either of common law or of equity are powerless to give relief against the erroneous judgments of assessing bodies, except as they may be specially empowered by law to do so. This principle is applicable to statu-

tory boards of equalization, which are only assessing boards with certain appellate powers, but whose action if they keep within their jurisdiction, is conclusive except as otherwise proved by law, although if fraud is charged there may be a remedy in equity under principles to be stated hereafter."

Circuit Judge Richards, in the case of *McNight et al, v. Dudley*, (148 Fed. Rep. 205-206) says:

"But it is insisted that the court below was without jurisdiction, that the action of the auditor was final and could not be reviewed in a suit, to restrain the collection of the taxes thus assessed. We recognize the existence in Ohio of the general rule that the decisions of taxing officers and tribunals charged with the duty of valuing property for taxation are final and conclusive."

"To these boards of Revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment upon the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

California Domestic Water Co. v. Los Angeles Co. 101 Pac. 547.

Stanley v. Board of Supervisors, 121 U. S. 535, 550,

7 *Sup. Ct.* 1234, 1239, 30 L. Ed. 1000.

"In the absence of fraud or malicious abuse of its powers the board of equalization is the sole judge of questions of fact and of the values of property."

Calif. Domestic Water Co. v. Los Angeles Co. 101 Pac. 547.

LaGrange etc. v. Carter, 142 Cal. 565, 76 Pac. 241.

"Nothing in the complaint appears from which fraud or abuse of discretion may be imputed to the board of Equalization."

"In nearly all the States, probably in all of them provisions are made by law for the correction of errors and irregularities of assessors in the assessment of property for the purpose of taxation. This is generally through boards of revision and equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, obtainable. The diversity of human judgments and the uncertainty attending all human evidence precludes the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them * * * of animals, houses, and lands in constant use. The most that can be expected from

wise legislation is approximation to this desirable end; and the requirement of uniformity and equality found in the constitutions of some States is complied with when designed and manifest departures from the rule are avoided.

To these boards of revision by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment upon the value of the property upon personal examination and evidence respecting it. Their action being judicial their judgment in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment cannot be recovered back in an action of law, any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed."

Hattie E. Stanley etc. v. Board of Supervisors, etc. 118-122 U. S. Rep, 617-630.

Mr. Justice Brewer, speaking for the court in *Albuquerque Nat. Bank v. Perea*, 147 U. S. 87, 13 Sup. Ct. Rep. 194, 37 L. Ed. 91, uses this strong and pertinent language: "The decree discussing the original and supplemental bills must be sustained. As to the tax of 1888, the case stands upon the alle-

gation that plaintiff's property was originally assessed at its full value, while other property was assessed seventy per cent thereof; that it appealed to the board of equalization for a reduction, and that such tribunal reduced the valuation, but only to eighty-five instead of seventy per cent. It would seem that the mere statement of this was sufficient. The law of New Mexico requires property to be assessed at its cash value. Confessedly, this plaintiff's property was assessed at fifteen per cent below that value. Surely upon the mere fact that other property happened to be assessed at thirty per cent below the value, when this did not come from any design or systematic effort on the part of the county officials, and when plaintiff has had a hearing as to the correct valuation and appeal before the board of equalization, the proper tribunal for review, it cannot be that it can come into a court of equity for an injunction or have that decision of the board of equalization reviewed in this collateral way."

"In the following cases it was held that mere overvaluation due to error of judgment or mistake in calculation cannot, in the absence of fraud, be remedied in a proceeding to enjoin the collection of a tax:

Coulter v. Louisville and N. R. Co. 196 U. S. 599, 49 L. Ed. 515, 25 Sup. Ct. Rep. 342;

Woodman v. Ely, 2 Fed. 839;

Exchange National Bank v. Miller, 19 Fed. 372;

Hazard v. O'Bannon, 38 Fed. 220;

Cochise Co. v. Copper Queen Consol. Min. Co.
8 Ariz. 221, 71 Pac. 946;

Wells F. & Co.'s Express v. Crawford Co., 63
Ark. 576, 37 L. R. A. 371, 40 S. W. 710;

Republic L. Ins. Co. v. Pollack, 75 Ill. 292;

Porter v. Rockford R. I. & St. L. R. Co. 76 Ill.
561;

Pacific Hotel Co. v. Lieb, 83 Ill. 602;

Chicago B & Q. R. v. Siders, 88 Ill. 320;

• *Gage v. Evans*, 90 Ill. 569;

Union Trust Co. v. Wever, 96 Ill. 346;

Traders' Ins. Co. v. Farwell, 102 Ill. 413;

Felsenthal v. Johnson, 104 Ill. 21;

La Salle & P. H. & D. R. Co. v. Donoughue, 127
Ill. 27;

11 Am. St. Rep. 90, 18 N. E. 827;

Collins v. Keokuk, 118 Iowa 30, 91 N. W. 791;

Challiss v. Rigg, 49 Kan. 119, 30 Pac. 190;

Symms v. Graves, 65 Kansas 628, 70 Pac. 591;

Frankfort v. Mason & F. Co. 100 Ky. 48, 37 S.
W. 290;

Odd Fellow's Hall Asso. v. Dayton, 25 Ky. 1.
Rep. 665, 76 S. W. 181;

Lackman v. Zumstein 10 Ohio Dec. reprint. 518;

West Portland Park Asso. v. Kelly 29 Or. 412,
45 Pac. 901;

Southern Oregon Co. v. Coos County, 39 Or.
185; 64 Pac. 645;

Southern Oregon Co. v. Schroeder, 39 Or. 607,
64 Pac. 1117;

International & G. N. R. R. Co. v. Smith County, 54 Tex. 1;

West v. Ballard, 32 Wis. 168;

King v. Gwynn, 14 Fla. 52;

Danforth v. Livingston County Treasurer, (Mont.) 59 Pac. 916;

Board of County Com'rs. of Lincoln Co., et al v. Bryant, (Kan.) 53 Pac. 775.

From the foregoing authorities we submit the rule is well established that a court of equity will not review the proceedings of a Board of Equalization or the assessment made by the assessor, and that the determination of the Board of Equalization that the assessment was a proper and valid assessment is a final determination of the matter. And we submit, that, in the absence of a showing of fraud on the part of the assessor and the Board of Equalization, which has not been done in this case, that this court has no jurisdiction to review the proceedings in this collateral manner.

FULL CASH VALUE OF APPELLANT'S PROPERTY.

We submit and seriously urge to this court that the learned Judge below did not fix \$1,718,636.37 as the full cash value of the property of appellant; the court arrived at said amount by one of the systems which he used in arriving at the market value; and did not find that said amount was the full cash value of the property, as is shown in his opinion, (Trans. Rec. 646).

“While it is realized that such a decree may not do exact justice between the parties, it is not impossible that the plaintiff’s assessment, as modified, is not more equal than that of many other taxpayers in the county. * * * “The net valuation upon which it must pay taxes is not greatly in excess of the actual value of its property.”

The method used by the court in arriving at the above amount did not include many elements which he admitted would seriously affect the market value of the property; and one in particular: namely, The additional value which is sustained by the Post Falls plant by reason of the fact that the said plant is the controlling works of a large and valuable reservoir which adds a material increase to the value of other power sites and plants, lower on the Spokane river, belonging to the said company.

The court states in his opinion that in arriving at the amounts many of the factors involved in the process by which this calculation was reached are admittedly uncertain and are in a measure susceptible to an honest difference of opinion. The court further states (Rec. pp. 642-643): “The evidence is extremely meagre upon certain features of the case, and with the facts disclosed by the record, supplemented by such other information as he may have acquired in the course of his investigations, Professor Cory, who was brought into the case as a specialist of much learning and experience, hesitated, if he did not wholly decline to express an unqualified opinion

as to the actual value of the property, and Mr. Wiley, whose standing as an hydraulic engineer is unquestioned, in testifying upon this phase of the case, answered only a hypothetical question. Keeping in view these conditions of the case, and bearing in mind that a slight decrease in an allowance for depreciation or maintenace or for some other account, and a small increment of gross revenue, would operate materially to increase the capitalized value, and further bearing in mind that the amount of power sold in 1910 greatly exceeds that sold in 1908, and that apparently the output in 1910 was below the full capacity of the plant, and that the revenue which may be derived from the sale of any additional power will be subject to comparatively small deductions on account of increased expense, it is apparent that upon the record before us reasonable men might reach different conclusions and that a finding of a value two or three hundred thousand dollars more, or less, than it is herein found to be, could not be set aside for insufficiency of the evidence."

A court of equity will not substitute its opinion for that of an assessing officer, when there is no evidence that the assessing officers were acting in bad faith, and where the conclusion reached by the assessing officers might have been reached by any reasonable man, acting fairly and honestly.

We seriously urge that this court should not interfere with the rulings and findings of the lower court, holding that the assessment on the property

of the appellant, with the deductions made by the lower court on the small dam, bear trap dam, and railroad spur and bridge, should stand.

THE VALUE OF THE POST FALLS PLANT AS A CONTROLLING WORKS.

The appellant certainly cannot seriously contend that there is not an additional value to the Post Falls plant, by reason of the fact that it is the controlling works for a large natural reservoir, and can be used to increase the power development of other plants belonging to the company on the Spokane river below this plant; And beyond any question the company has always considered it of great importance in the development of its other power sites, as is shown by the evidence of the general manager, Mr. McCalla, given in the case of the Washington Water Power Company versus Charles Waters, et al. Mr. McCalla's evidence on record pages 94 to 99 is as follows:

“(KERNS) In other words, by holding the water of Lake Coeur d'Alene and the reservoir basin you increase the power of your Spokane plant from 21,300 to 33,400 horsepower?”

A. That is it exactly. We contemplate to put in there four 7500 kilowatt generators, 30,000 kilowatt or a total of 40,000 electrical horse-power.” * * *

“Q. Without the lake storage how much power could you generate in that new dam? A. Without lake storage we can generate in the neighborhood of 13,600. Q. With the lake storage, how much? A.

About 19,000. This same storage affects the city of Spokane; it has a pumping plant for water supply, also affects any power site on the river."

In referring to the Little Falls plant, Mr. McCalla says:

"(Court) I have note here that indicates you stated that the increase of power down there would be about 6,000 horse-power by reason of the reservoir. A. 5,400 with the complete installation. Q. Get about 5,400 by the addition of the reservoir? A. Yes."

The Supreme Court of the state of New Hampshire in the case of the *Winnipiseogee Lake Cotton & Woolen Manuf'g Co. v. the Town of Gilford*, 10 Atlantic 844, a well considered case, has this to say upon this subject:

"In appraising a water power for taxation, the assessor may consider all facts affecting its value—the original cost of the entire property, the quantity of land flowed, the magnitude of the power, the places where it is or may be used, the limitations upon its use, the income derived by way of rents, the expense of maintaining it, or anything that might justly affect the judgment of a person desiring to purchase it."

"It is immaterial where the property benefitted by the use of the reservoir rights is situated. The rights are not less a parcel of the Gilford lands in case their exercise is beneficial to mills in Massachusetts than they would be if they were used and con-

trolled for the sole benefit of mills in Gilford. It may be that the value of the mills in Massachusetts is increased by reason of the existence of the reservoir rights, and that of the rights by reason of the existence of the mills. If so, and each property is appraised for taxation at its full value, it does not follow that any portion of either property is included in the valuation of the other. The assumption that the plaintiff's reservoir rights are taxed with the Lowell and Lawrence mills to the extent that the value of the mills is increased by reason of the rights has no foundation. If, by excavation on elevated land near a city, pure spring water were found sufficient to supply, by means of an aqueduct, all the inhabitants, the effect might be not only to increase largely the value of the tract upon which the water is obtained, but also the value, to some extent, of every house and lot in the city. A taxation of the city lots and buildings at their full increased value, as the law requires them to be taxed. (*Gen. Laws, c. 56, *1*) would not be a taxation of any part of the Aqueduct Company's rights or land; nor would a taxation of the latter at their full value be a taxation of the city property, although but for the city's property, they might be substantially worthless. The value of the plaintiff's property is not affected by the fact that the benefited mills in Lowell and Lawrence are owned, not by the plaintiff's corporation, but by the stockholders, who, in place of money dividends, take as their portion of the in-

come the benefits accruing to their respective mills. The value of the Aqueduct Company's property would be neither more nor less(if all the householders and lot owners in the city were its stockholders, and instead of dividends in money, received water, each in proportion to the amount of his stock."

"If the plaintiff should sell and convey all their property in Gilford upon a condition that a purchaser regulate the flow of water, as it is now regulated, the right to the stipulated flow of water would be an interest in land situated in Gilford, and taxable. If the owner sells his dam and mill privilege reserving a right to draw a specified quantity of water the reserved right is real estate and taxable. If the owner of a mill and reservoir water right in Gilford, worth \$10,000 its full value, reserving all water rights, except power sufficient for the use of the Gilford mill, his reserved rights are worth \$11,000, and are taxable at that sum in Gilford. An owner of a valuable water power cannot escape taxation by putting in another the title to the soil, which is generally of little comparative value in the absence of the power. And of no value for other purposes, so long as it is used to create the power."

Our contention is that the above case, with almost the identical conditions, clearly upholds our contention, and that the learned court below was right in his opinion and findings when he stated; (Rec. pp. 628-629). "There is considerable testimony to show by reason of an impounding of wa-

ters on Coeur d'Alene lake, other parts of the plaintiff's system are greatly benefited during certain months of the year. Upon the records before us it would be impracticable to estimate the value of such advantage in dollars and cents. And it is not clear that it would be possible upon any available evidence to reduce such additional value to figures. But while it is intangible, I do not think that it can properly be entirely neglected. It is a condition of circumstance of which the contemplating purchaser would take cognizance, and by which he would to some extent at least be influenced."

PENALTY.

There is nothing in this record to show that the court imposed any penalty on the company. The judgment and decree of the court was that the company pay Kootenai County, a sum of \$12,685.00. (Rec. pp. 647-648).

We respectfully submit:

I.

That under the evidence submitted and findings of the court, this cause should have been dismissed by the lower court for the reason that the court had no jurisdiction.

II.

As there was clearly no fraud shown; and as the evidence established beyond any question that the taxing officers of Kootenai County were acting honestly and fairly when this assessment was made,

the judgment and decree of the lower court should be affirmed; and the Washington Water Power Company should be compelled to pay its just proportion of the taxes of Kootenai County for the year 1911.

W. D. Wernette

Robert H. Eaker

Attorneys for Appellees.

Respectfully submitted,

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